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AN ARCHBISHOP AND HIS CLAIMS:
THE ALLEGATIONS OF MARTINHO PIRES IN ROME (1199)
ON THE QUARRELS BETWEEN BRAGA AND COMPOSTELA

Contexts and problems: a long hauled conflict

When the men who served in the archbishop of Braga's chancery compiled the evidence in defence of the claims of their archdiocese, in 1199, the quarrels between Braga and Compostela had been plaguing the relations between the two archdioceses for at least seventy years.

In fact, the whole affair had been poisoned from the start. As stated in the *Historia Compostellana*, the envoy whom the industrious Diego Gelmírez sent to Rome with the mission of petitioning Pope Calixtus II to grant Compostela the status of a metropolitan church – no other than his faithful Hugh, former canon of Compostela and by that time bishop of Oporto – was also to persuade the Pope to transfer all the suffragan churches of Braga to the jurisdiction of Saint James¹.

Gelmírez wasn't only trying to upgrade the quality of the diocese over which he ruled, he was also trying to annihilate whatever power and influence Braga – which could claim Roman ancestry and had been restored in 1071 – might have.

What Callixtus II confirmed to Compostela instead², was Gelmírez'

1. According to the narrative, Hugh, bishop of Oporto, seeking to evade the persecution by the Aragonese king had revealed his mission and intentions to a pious man who had hidden him and sheltered him for the night: «Adeo, Deo iuvante, Papam Calixtum missus a Compostellano episcopo causa ecclesiam beati Jacobi sublimandi, uidelicet ut Bracarenensis uel Emeritana metropolis in ecclesiam beati Jacobi transferatur». (HC, L^o 2, 12.2).

2. The *Historia Compostellana* attests the issuing and reception of the bull which granted Compostela its metropolitan status, *Omnipotentis dispositione*, dated February 26, 1120. The texts of the letters which granted Compostela its new status were allegedly read aloud and with great pomp and circumstance in the Cathedral of Santiago, on 25 July of that same year of 1120, *día del Após-*

original plan B: the suffragans of the Visigothic and yet unrestored archdiocese of Mérida.

Apart from the obvious and immediate rivalry derived from the mere fact that what were now two archbishoprics were geographically too close for comfort, the ensuing fifteen years would provide grounds for further complicating factors to this relationship, transforming it into a bitter quarrel.

As early as 1120-1124, it would have been impossible for the Pope to have anticipated such complex turmoil as it would eventually rise. By then, there was only one Kingdom in the north-western corner of the Iberian Peninsula, even if a very troubled one, and that was Urraca's Kingdom of León-Castile which she had inherited unified from her father Alfonso VI and which, in due course, after her death in 1126 and much internal strife, would pass to her son, Alfonso VII, crowned as King of a unified Kingdom as late as 1135, in the cathedral of León. Therefore, the problems that in the early twenties of the twelfth century the Pope would have foreseen could never have included the fact that Afonso Henriques, who was eleven years old at the time of the concession of the metropolitan dignity and the suffragans of Mérida to Compostela would become King and lead to a new political formation precisely on that part of the Iberian Peninsula. Pascal II could only have foreseen problems of an exclusively ecclesiastical nature.

Yet, in 1128 the young Afonso Henriques assumed rule over the County of Portugal from his mother Teresa, started expanding his territory towards the South almost immediately, and as soon as 1139 started to style himself King in his documents. From then onwards Portugal was to progressively affirm itself as another independent Christian Kingdom in twelfth-century Iberia. The bases for such a development were first and foremost the warrior-like qualities of its first ruler and his capacity to lead an invincible battle against the Muslim ruled kingdoms³.

And such developments would eventually lead to an almost schizophrenic geopolitical situation to which the archbishops of Braga and Compostela with their respective political ambitions near the kings they were about to serve, and whose chanceries they were also about to fill with their own men, would have to adapt to.

tol (HC, L^o 2, 19). The confirmation of the concession of the suffragans of Merida arrived in Compostela via the bull *Potestatem ligandi*, issued in Lateran, 23 June 1224, (Mansilla, *DhIII*, 80). For Gelmírez' efforts, Portela, *El báculo, y la ballesta*, 56-71; Fletcher, *A vida e o tempo*, 242-250.

3. Branco, «The King's Counsellors», 520-523; Branco, «Elites Eclesiásticas», 135-142.

The jurisdictional boundaries of the archdioceses did not coincide in any way with the political geography that the twelfth century had shaped for each of the kingdoms of the westernmost part of Iberia. To have several enclaves of Portuguese or Leonese territory within their own ecclesiastical territories was not helpful for either of the archbishops concerned. Nor for the kings involved in widening their territories as much as they could against their neighbours, whether Muslim or Christian, whenever possible.

So how could they solve such conundrum? More to the point, would the two parties and parts involved think that it was more to their advantage to solve the problem definitively or rather to perpetuate it until the political situation stabilized?

The theft of the relics of St. Frutuoso, perpetrated by Gelmírez himself during the period when he was still only bishop of Compostela⁴ as well as the appropriation of the churches of St. Frutuoso and St. Victor, and half of Braga's jurisdiction, took place at the very beginning of the quarrels, and illustrate quite well the fact that the problems in the relationship between Braga and Compostela in those first years would merely be of an ecclesiastic nature. Such «pious thefts»⁵ would soon be joined by the question of the entitlement of both archbishops to bear the Cross aloft in each other's territories.

That alone would have been more than enough to feed a typical unending ecclesiastical quarrel between the two archbishops who shared the territory of the Leonese or Castilian-Leonese Kingdom, and it surely doesn't come as a surprise if, from the onset, the archbishops of Braga were very suspicious about the intentions of the Compostelan prelate, nor is it strange that this rivalry were to develop into a full blown judicial problem even if there hadn't been any interference from the political developments which would soon raise the quarrel to a new level.

And that was precisely what was about to happen. The upsurge of the Portuguese king, and of a new monarchy in Iberia, lent the question a new intensity. Afonso Henriques, who had offered his vassalage to Rome in 1143 and would soon become a censitary vassal of the Papacy, started promoting the ecclesiastical restoration of the dioceses of the land he was

4. HC, L^o 1, 15.

5. Geary, *Furta Sacra*, 111-117, provides ample exemplification of thefts of relics during the eleventh and twelfth century, equally assumed as a pious action, either because perpetrated by very pious and good men, or because the relics would be better venerated in their new shrine - exactly the justifications given for Gelmírez' actions in *Historia Compostellana*.

conquering, as conquest proceeded swiftly southwards. All those bishoprics thus restored were obviously put under the jurisdiction of the archbishopric of Braga, regardless of the fact that four hundred years earlier, they had been under the jurisdiction of the yet unconquered Mérida, and that therefore the post-1120 Compostelan archbishops might consider themselves entitled to their loyalty and obedience.

Were such dioceses to be assigned to their traditional old jurisdictional masters – Mérida and therefore now Compostela – or were they to be assigned to the archbishopric of the new master of the land, the King of Portugal, in whose name the restoration of the bishoprics was taking place? Of course, such a rationale also applied to dioceses which were now under the rule of Afonso Henriques, like Coimbra, Lamego, Egítânia and Viseu, and whose political dominion had previously belonged to the Kings of León-Castile.

But these were novel grounds on which such issues were being challenged. Before Compostela's ascension to metropolitan dignity, the question of the obedience of the sees of Coimbra, Lamego, Egítânia and Viseu was a problem in the context of the conflicts on the entitlement to head the Primacy of Toledo, which basically started immediately after the conquest of Toledo and the restoration of its archdiocese by Alfonso VI, and opposed Toledo to all the remnant Hispanic archdioceses, *maxime* to Braga. This quarrel had been argued since the late eleventh century, and progressively took the lead as *the* ecclesiastical problem of the Iberian Peninsula, overflowing to the first quarter of the twelfth century and continuing to be perceived, especially by the Papacy, as the most crucial problem in Spain⁶. The four episcopates were only one point in the much more important topic of the Primacy and obedience of all the other archbishops to Toledo.

As soon as the suffragans of ancient Mérida were ascribed to Compostela, this item shifted from the dispute opposing Braga to Toledo, to what may have been perceived then as the much more mundane and petty conflict between Braga and Compostela⁷. But until much later, these problems were still being addressed and judged within the context of the problems concerning Toledo's role as primate of all Spains. And it might have remained so if it hadn't been for the political developments concerning the transformation of the county of Portugal into an independent

6. Linehan, «Religion, Nationalism, National Identity».

7. Branco, *Poder Real e Ecclesiasticos*, 1, 77-79.

Kingdom, if Braga had not been ruled by archbishop João Peculiar from 1138 onwards, and if the first archbishop of Compostela had not been the unstoppable Diego Gelmirez, serving – although not with unquestionable loyalty – Queen Urraca and then King Alfonso VII until his death in 1140. But, as it turned out, those were precisely the major actors on stage, which gave the quarrel a very special turn and prepared for the inevitable and gigantic clashes of the last twenty years of the century.

The precociously complex and composite conflict between the cathedral churches of Braga and Compostela became even more complex from the middle of the twelfth century on, as political rivalry and ecclesiastical strife fed the ambitions of both kings and archbishops and provided them with legitimacy, opportunity and motives to pursue the fight, either on legal grounds or in the political field, to new heights⁸.

The old list of questions (*quesitos*) which composed the traditional bouquet of complaints brought to Rome by the archbishops of Braga and Compostela, famously known as the «five items» was definitely destined to have an extra boost from the problems provided by the definition of the *appartenance* of the «four bishoprics», Coimbra, Lamego, Viseu and Egitânia, and then, after their respective conquests, in 1147 and 1166, of the «two bishoprics», Lisbon and Évora. The «three» items that constituted the first phase of the quarrels, i.e. (1) the debate over the legitimate jurisdiction over the churches of St. Frutuoso, St. Victor and half of Braga, (2) the entitlement to bear aloft the cross in each other's archdioceses and (3) the very complex case of Zamora⁹, were soon to be almost

8. All the details of this quarrel have been described long ago. Mansilla («Disputas diocesanas»... 89-143) is probably the author who has organized the information in the most detailed and descriptive form, based above all in the compilation of Erdmann in *PUP* for the Portuguese case and his own work (*DhIII*) for the Leonese and Castilian kingdoms. Erdmann, in his still valid *O Papado e Portugal*, 1935, even if he approached the issue with critical eyes, didn't take it as seriously as it deserved, perhaps because it is only really resolved during the pontificate of Innocent III, which he doesn't study. It was Feige, «Die Anfänge», 85-436, who, resorting to the documentation kept in the archive of the Cathedral of Braga repositioned the problem in 1978, and placed the whole quarrel under the topic of the construction of national identities and national churches, a perspective that was very innovative at the time, but that may be dangerous to try and follow literally, in his attempt at reading in the evidence he studied a construction which is too well built and secure, in a time of change and uproar. His article «La Primacía» is far more interesting in the questions that it raises and the suggestions it makes as to the real impact and role played by these quarrels. Peter Linehan, both in *History and Historians* and in «Religion, Nationalism and National Identity», 161-168 has given the quarrels a renewed importance, as a driving force for political change and ecclesiastical affirmation.

9. Richard Fletcher, *The Episcopate*, 195-203, coined the expression «Zamora imbroglio» to express more vividly the complex situation of an archdiocese that everyone coveted and claimed to have a legitimate right to submit to their own jurisdiction. The papacy alternated unceasingly in the sentences passed about this topic, before eventually solving it. Feige, «La Primacía», 108.

overshadowed by the much more relevant problem of the jurisdictional status of the four and two bishoprics, always treated as separate topics. And even when the final sentences of 1199 purported to calm down every dissonance, the question of the two archbishoprics of Lisbon and Évora continued to fuel a very active and difficult conflict between the two cathedrals and to be a source of unending royal interference in ecclesiastical affairs.

Actually, the evidence we possess for the ecclesiastical quarrels of the twelfth century in the Iberian Peninsula makes it apparent that the Braga vs Compostela question didn't come to the fore until the Primacy of Toledo problem had been appeased. And the reason for this may also be one of a political nature, since the Toledan claims to supremacy have always been far more politicised than the quarrel between Braga and Compostela was until much later.

In the perpetually changing Iberian political configuration of the 50s, 60s and 70s of the twelfth century, the issue of the Primacy of all *Spains*, the entitlement to which the archbishops of Toledo disputed against Braga and Compostela in a very consistent manner, took the lead as the most important ecclesiastic quarrel during those middle years of the twelfth century¹⁰. A Papacy also plagued by internal problems and permanent conflict against an ever more difficult Empire, related more easily to the questions derived from the Primacy and the Legacy of Spain than to the need to settle what must have appeared as minor conflicts between two archbishoprics in the Far West. Hence the almost total absence of papal letters specifically on the conflicts between Braga and Compostela until the late 70s, when the question re-emerged with a vengeance. During those years, all the issues that would later be classified as the «five items» dossier were already being addressed, but they always appeared in the context of papal letters related to the Primacy quarrel.

The late 70s brought several novelties, though. The more troubled times of the Papacy in its fight against the Empire seemed to be coming to an end. At least the Pope felt that he could return to Rome, to where he summoned and where he held the council of Lateran III in March 1179, a council which the Spanish archbishops attended. Adding to that, or as a consequence of it, in May of 1179 Alexander III issued the bull *Manifestis Probatum Est* for Afonso Henriques, thereby recognising him as worthy of receiving and using the royal dignity, and granting him the

10. Feige already stressed this aspect in quite definitive terms. See «La Primacía», 86-110.

capacity to transmit it to his successors, as well as of keeping his Kingdom united and inalienable and exhorting him to expand its territories through conquest of the infidels. The Pope couldn't miss the opportunity of being able to affirm that he could «make a King», just as the King of Portugal was in desperate need of being able to claim the legitimacy of his ambitions and, more than that, to be able to affirm himself as a *de iure* King in the context of the highly contested struggles for power in the Iberia of those decades¹¹.

The possibility for both the Papacy and the Portuguese ruler to affirm themselves as strong powers within their own jurisdictional realms, brought a new lease of life to the Braga vs Compostela quarrel, which now had a particular political setting in which it could develop independently of the fight for the Primacy of all Spains.

Following the death of Alfonso VII in 1157, which also put an end to the idea of a unified Spanish Empire, and in the aftermath of Cardinal Jacinto's first legacy to the Iberian Peninsula, the problem of the Toledan Primacy slowly lost its virulence and would remain more or less in hibernation until 1207¹² when Rodrigo Jiménez de Rada, even before Las Navas, resuscitated the whole question and forced the hand of the Pope during Lateran IV, managing to get the status of his cathedral back on the papal agenda¹³.

But from the late 70s of the twelfth century until the first decade of the thirteenth, the stage seemed to belong to the conflict between Braga and Compostela, whose archbishops now had full backing from their respective Kings to act more freely. Or at least the archbishop of Braga did¹⁴.

11. Branco, «Os homens do rei», 132-142.

12. For the itinerary of the two legacies of Cardinal Jacinto, see Ingo Fleisch, *Kirche, Königtum*, 47-52. Feige, *La Primacia*, 107-117, where he claims that the 1156 papal privilege of Adrian IV to the Toledan is ambiguous, opening the door to the argument of the entitlement to the Primacy *ex antiquo* and how that argument gave opportunity to the ambitions of the remaining archdioceses, especially of Braga. According to him, Adrian IV brought back the primatial dignity to what it had been earlier, an honorific dignity. Fabrice Delivré, *The Foundations*, 395-397, states that the first archbishops of Toledo almost avoided the argument derived from antiquity, preferring the legal ones, and argues that it was not until the thirteenth century that the *ex antiquo* argument took flight. Alexander III reissued a papal privilege reasserting the «contents» of the primatial rights of Archbishop John and then Cerebruno, after the second legacy of cardinal Jacinto, but from 1172 to 1207, there is no other papal document on the topic (Branco, *Poder Real e Eclesiásticos*, 1. 48-55, 77-78).

13. Linehan, *History and the Historians*, 278-285.

14. After the death of Alfonso VII the relationship between the archbishops of Compostela and the Leonese and Castilian Kings went through some very difficult moments as Marta González (*El Arzobispo de Santiago*, 141-143, 245-246, 370-71) reminds us when mentioning the very bad relationship of Fernando II of León with several of his Compostelan archbishops, espe-

Alexander III had already attempted to try and sort out the problems in 1177, when he summoned both parties to Rome¹⁵. In December 1180 he commissioned three judges delegate to go to Tuy the following year and make all the necessary arrangements to definitively solve the question of the four episcopates, now treated as belonging to the complete dossier of the quarrel between Braga and Compostela¹⁶. On the 29th of the same month and year he was issuing letters both to the archbishop of Compostela and to the bishops of Lisbon and Évora, ordering them to go to Compostela and pay homage to its archbishop as well as reassuring the archbishop of his entitlement to that submission¹⁷.

Alexander III seemed to be seriously intent in giving the question a definitive solution. And then he suddenly died.

His successor, Lucius III, reissued the letters of commission that Alexander III had sent to the judges delegate, trying to move in the same direction. The first hearings of the judges delegate in Tuy took place in 1182. The full text of the report they sent to Rome after these hearings still exists, but there is no evidence that Lucius III's subsequent letters, ordering the bishops of Lisbon and Évora to obey Compostela, had any echo¹⁸.

cially with Martin (1156-1159/1164-1165/1167), who was expelled from his church at least three times, Fernando Curialis (1160-1162) or Pedro Gudesteis (1163-1164/ 1165-1167/1167-1171). Pedro Suárez de Deza (1172-1206), however, seems to have kept a good relationship with the monarchy and managed to hold his dignity for a long and successful period. For the same chronology, the relationship between the Portuguese Kings and the archbishops of Braga – the Kingdom's only archbishopric – seems to have been one of close collaboration, even if there were several and serious conflicts between the Portuguese Kings and some of their bishops.

15. In a papal letter dated 2 January 1177 (Erdmann, *PUP*, 244-246) we are told that archbishop Godinus of Braga and a certain M. delegate of the archbishop of Compostela had both been present at the papal audience, summoned by Alexander III with the intent of solving the problem of Lisbon and Évora.

16. Erdman, *PUP*, 252-253.

17. In fact, from 1177, Alexander III was issuing almost one papal letter per year to solve the problems related to the opposition of Compostela and Braga. It was so in 1178, 1180 and 1181 (Erdmann, *PUP*, 246-247, 251, 252-254, 255-256) when letters were sent to the contending parties and judges delegate were appointed in order to make the necessary enquiries so that a definitive sentence might be issued.

18. Erdmann, *PUP*, 258-261. In September 1181, Lucius III was already commissioning the bishops from Tarragona, Salamanca and Oporto as judges delegate instructing them to go to Tuy and hear Godinus of Braga and Pedro of Compostela on their dissidence. The 1182 report of the judges delegate may be found in Erdmann, *PUP*, 264-282. In 1182-83 (Erdmann, *PUP*, 285-287), he issued letters to the bishops of Lisbon and Évora ordering them to pay obedience to Compostela and in 1184 the judges were once more passing sentence on Zamora, following the contumacy of the archbishop of Braga in not going to Coria for the final judgement of that question (text also published in Erdmann, *PUP*, 289-291).

As early as April 1186, obviously conscious of the failure of his predecessors and the intricacies of attempting to resolve quarrels in such complex political and ecclesiastical circumstances, Pope Urban III commissioned new judges delegate for the case. He nominated the *vicedominus* of Brescia and Master John of Bergamo with the mission of returning once more to Tuy and set up an audience there, so that they could gather sufficient evidence for a papal definitive sentence to be pronounced on all the items of the quarrel between the two archbishoprics¹⁹. The long and very rich reports sent to Rome by the judges delegate, although illuminating the procedural modes being followed by everyone by the end of the 80s of the twelfth century and attesting to the deeply imbedded juridical culture which had by then taken over not only the Papal chancery but also the *scriptoria* and men at the service of both archbishops, had no immediate consequence²⁰. Urban III died before he had issued any sentence on the matter, leaving it without a definitive solution. Once more.

His successor, Clement III, issued a papal letter in April of 1190, defining which of the churches should obey Braga. Contrary to all expectations and tradition, Lisbon and Évora were mentioned as legitimately belonging to Braga. We do not know why this might have been so, but perhaps the election of Martinho Pires as Braga's new metropolitan in December of 1189, as well as his possible presence in Rome for confirmation of his election, sometime early in January 1190, has some responsibility for the unexpected benevolence of the Pontiff towards Braga²¹.

Godinus died in July 1188, shortly after Clement III's accession to the Papacy (1187). Martinho Pires, who had previously been dean of Braga and then bishop of Oporto under archbishop Godinus, was mentioned as archbishop elect in royal documents as soon as December 1189²². He was in Rome during the first months of 1190, where he came to be confirmed and receive the pallium and where he must have taken the oppor-

19. Commission letter in Erdmann, *PUP*, 297-299; for the long and detailed report of the vicedominus of Brescia, dated February 1187, see Erdmann, *PUP*, 303-324.

20. For the ways in which the processes of law should be handled, especially in the Iberian Peninsula, see García García, «El proceso canónico medieval en los archivos españoles», 481, and «El proceso canónico en la documentación medieval leonesa» 272-279. García states that there is much evidence on how these processes should be dealt with, as opposed to the evidence on how they were applied in real-life cases. These quarrels and the documents produced for their resolution, as other similar documentation, seem to contradict such panorama.

21. For data and documentation, see Branco, *Poder real e Eclesiásticos*, vol. 2, 97.

22. In the royal grant of the Castle of Alvor to the monastery of Santa Cruz of Coimbra, after the conquest of Silves (*DSI*, 64-65).

tunity to influence favourably the Pope, who issued a papal letter of privilege to Braga and the confirmation of *Manifestis Probatum Est* to King Sancho I, who had conquered Silves the previous year²³. From such evidence we might be tempted to think that Martinho Pires, whose allegations of 1199 we are dealing with here, was actively involved in the quarrel with Compostela from the early beginnings of his career as archbishop. But actually his involvement in it antedates his election to Braga by at least fifteen years. As dean of Braga between 1175 and 1185, serving therefore under Godinus in the heat of the problem, and during the Tuy enquiries of 1182, he must have worked actively in the preparation of the legal dossiers and the compilation of documents which were presented to the judges delegate as important procedural pieces of evidence during those hearings. Although bishop of Oporto from 1185 to 1189, which he took up after the death of the *iurisperitus* bishop Fernando Martins, it is conceivable that he would also have been involved in the production of legal arguments and documents which archbishop Godinus presented once more in 1187 before the *vicedominus* of Brescia. It is therefore not at all surprising to recognize the familiarity with the process and all its details revealed by the allegations which he personally took to Rome in 1199 in order to defend the jurisdictional rights of Braga. But 1199 must have seemed very far in that Spring of 1190, when Clement III issued the favourable sentence to Braga. The fate of Braga wasn't settled yet.

Celestine III (1191-1198), the next Pope in this fast line of short-lived papacies, picked up the topic again, and decided to make a U-turn, once more. In May 1194 he writes to the bishops of Lisbon and Évora explaining to them that he had summoned archbishop Martinho to come to Rome and present his arguments in the papal audience on the case of their obedience to Compostela, but that he had excused himself from that duty claiming that he was very busy with Cardinal Gregory's legation and preparing for King Sancho I's new military campaign, which prevented him from travelling to the papal curia. The Pope went on to inform the bishops that he had consequently granted the archbishop of

23. The papal chancery issued three letters on 26 April 1190: the already mentioned letter to all suffragans of the archbishop, informing them of the obedience that was due to Martinho Pires as their metropolitan in which it is clearly said that Martinho Pires had appeared in Rome before the Pope (Erdmann, *PUP*, 339-340); another letter, addressed to the archbishop, bishops and king of Portugal, on the abuses of church patrons all over the Kingdom (Erdmann, *PUP*, 340-341) and a letter of protection to the chapter of Braga (Erdmann, *PUP*, 341). Ten days later, the confirmation of the *Manifestis Probatum est* is issued (Erdmann, *PUP*, 342-343). It would be very strange if Martinho Pires had not had anything to do with such confirmation.

Braga until September of the following year to come before him²⁴. A year passed, and then two, and then almost three, and Martinho of Braga was still not giving any signs of intending to journey to the papal curia. In January 1197 Celestine III issued a letter in which his previously benevolent manner had been abandoned²⁵. This time his command for Martinho attend at the papal curia was accompanied with the threat of depriving Braga of the Galician bishoprics – and transfer their allegiance to Compostela – if he did not appear in Rome before the *Laetare Jerusalem* of 1198 for a meeting in which both he and Pedro Suárez de Deza, metropolitan of Compostela since 1172, were asked to provide proper argumentation and proof of their claims. Celestine III also took the opportunity to admonish Martinho not to forbid the bishops of Lisbon and Évora paying due obedience to Compostela.

The document containing the allegations of Martinho Pires of Braga, which is published below was compiled precisely at this crux. The whole argumentation of the archbishop would be constructed around the events which took place in 1187, and between 1194 and the year 1199, when he finally came to Rome to secure the rights of his archdiocese.

It wouldn't however be Pope Celestine III the one to issue the final sentences on this controverted topic. As it happened, Pope Celestine III died in the first week of January 1198, and the hearing of the two archbishops would occur before his successor, none other than Innocent III, who, quite characteristically, managed not to allow the two contenders to go back to their old schemes or delay the proceedings any further, and proceeded to pass judgement on the quarrels.

When we next hear of the meetings of Martinho Pires and Pedro Suárez de Deza before the Pope, we are in July of 1199, and Innocent III is issuing a set of papal letters, with the final sentences for all the five items that constituted the quarrel²⁶.

If it weren't for the documents on the hearings preserved in the archive of Braga, among which the allegations of 1199 published below, we would know nothing of what happened in those meetings, apart from what is described in the text of the papal bull containing the definitive sentence²⁷.

24. Erdmann, *PUP*, 358-359.

25. Erdmann, *PUP*, 374-376.

26. Between 2 and 12 July 1199, the papal chancery issued eight letters relating to the quarrel, including the final sentences. They are published in documents n. 45-52 of *Bul.*, 66-94.

27. Issued on the 2nd of July 1199, *In causa duorum* (*Bul.*, doc. 45, 69-74). As to the other documents related to the defense of Martinho Pires of Braga in Rome in 1199 and preserved in the Braga Archive, Peter Feige (*Kirche und Königtum*, 377-395) has published extracts of the more

Arguments and argumentation: papal authority, royal authority, a quarrel and the Law. The point of view of Martinho Pires de Braga

The allegations of archbishop Martinho in Rome on the cause of the two bishoprics, are part of an extensive dossier on that «last episode» and was composed precisely in 1199, when the archbishop came to Rome and faced both Pedro Suárez de Deza and the pope in person.

As we just saw, after years of being repeatedly and unsuccessfully summoned to the papal curia, the two archbishops finally coincided in Innocent III's audience, sometime during the first part of 1199, when they presented their respective views and produced the proofs that would justify their claims on all the issues under examination. More than that, they proceeded to discuss each other's arguments, trying to influence the final decision by refuting the opponent's arguments.

Document n° 41 of the *Gaveta dos Arcebispos*²⁸, extant until today in the Archive of the cathedral of Braga is an incomplete copy of the arguments presented by the archbishop at that time in order to prove his legitimate right to the possession of Lisbon and Évora as his suffragan bishoprics. Unlike what we know of the procedural aspects derived from the reports of the judges delegate on the enquiries and hearings they hosted at Tuy in 1182 and 1187, which introduce us into the world of the production of innumerable witnesses, original and copied papal letters, documents of all sorts, chronicles and histories, geographies, collections of council canons, compilations of canon law, cartularies, forgeries and all sorts of documents before the papal judges delegate²⁹, these allegations are a coherent piece of legal reasoning, structured in a logical way, around «questions» or «topics» that relate to the accusations previously advanced by the archbishop of Compostela. Reading through the text, it is obvious that Martinho is defending himself from, rather than accusing the archbishop of Compostela, but in so doing he is trying to prove that the accusations and the evidence produced by Pedro Suárez de Deza are either false, or procedurally incorrect, or void of legal substance on which to stand. In any case, void of substance and therefore invalid³⁰.

«historiographic» parts of them. Of similar chronology (i.e., composed for archbishop Martinho's defense) there are still two more «allegationes» on the Zamoran question and one «list» of all the documents that proved the entitlement of Braga to the «four episcopates».

28. For the exact reference see below, Annex 1. In 1978, Peter Feige (*Die Anfänge*, Annex 6, 391-395) published extracts from this text.

29. Branco, «Constructing Legitimacy», 37-45.

30. «Primus enim, fiunt petitiones in libello (...) Libelli ergo talis tenorem: Peto quatinus

On line 85 of the 134 that compose the part of the allegations that have survived until today, we are told that the Compostelan had put forward a list of petitions against the archbishop of Braga, and Martinho effectively addresses each one of them, in order, and item by item, as any lawyer would do.

The internal organization of the text itself is self-explanatory, immediately making it clear to the reader that we are facing a well-structured and learned piece of defense. Items for discussion are often introduced by the expression «*Obicitur (...)*» immediately followed by a short enunciation of the accusation or problem, and then the word «*Responsio (...)*» marking the beginning of the argumentation and legal authorities which will contradict the accusation. «*Ergo*» and a conclusion, normally close the line of reasoning, summarising everything in a phrase that proves that the accusations have no ground on which to stand, before passing on to the next item being tried. Archbishop Martinho Pires and his legal team knew well the rules of correct argumentation, and the way in which a case should be made in front of a judge.

The first five lines of his argumentation make it immediately apparent that he is working on a specific item, the question of the bishoprics of Lisbon and Évora, and that he is not only using all his best arguments to undermine Compostela's claims, but also doing it with extreme competence:

Super Ulixbonensi et Elborensi episcopatibus nolumus stare in causa nec super eis respondere, et si aliquid dixerimus forte quod potest uideri alicui pertinere ad causam de episcopatibus illis sine preiudicio nostro dicemus quia sic ius nostrum protestamur.

*Quia, pendente lite, spoliavit nos prout confessus coram uobis fuit et petimus restitutionem in primis, ut inferius plenius dicetur. Dominus Compostellanus legit multas litteras summorum pontificum scriptas illis duobus episcopis elborensi et ulixbonensi quod ipsi obedirent compostellano. Quibus sic responsio uero nostra est quod preceptum fuit eis quod ei obedirent semel ab uno papa. Sed illud fuit nouum et inauditum quod sine ordine iuris una preceptione deberet ledi ita grauiter ecclesia bracarensis [...]*³¹.

It is also quite obvious, from the onset, that the basis for his own argumentation against both the evidence he needs to defy and the accusations he needs to deny is going to be either to claim procedural error or legal nullity. In this particular instance, he expresses the views that firstly, in a situation of *pendente lite*, you cannot act and secondly, it is

satisfaciat mihi de iniuriis quas intueri mihi fecit consecrando Ulixbonensem et elborensem (...)» (see Annex 1, lines 85-87).

31. Annex 1, lines 1-5.

nouum et inauditus that without *ordine iuris* a single order should damage Braga's interests so badly. And then he proceeds to quote the legal texts that give authority to his argument, like any lawyer would do, even today. Quoting from the Justinian Code, he clearly claims that the Emperor cannot make new laws without confirming whether it was the right thing to do, and if it doesn't harm the republic; and then he proceeds to enunciate a law on the alienation of dowry, one Decretal of Alexander III inserted in *Compilatio I* and an «Old Canon», patent in the *Decretum*, all clearly declaring that nothing new and unheard of should be transformed into law, without long and reiterated consideration³². He concludes this long, elaborate and complicated reasoning, by stating that consequently, he had done nothing wrong in not showing up to the first summons he had received from the Pope, and that therefore the Compostelan archbishop had no grounds on which to attack him³³. He was just starting.

His argumentation was about to take a far more aggressive tone, and to question almost everything and everyone that could harm his archdiocese's interests, from reaffirming and reinventing the legal basis on which the king of Portugal could restore episcopal sees after their conquest, to alleging the help of divine and human law, to challenging the papal *persona* as source of law, and trying to define limits to the papal power. All these arguments come into these allegations with which the archbishop intended to prove the superiority of his position.

Martinho Pires' allegations are therefore structured as an argumentation and constructed like a pamphlet. What we have here is a lawyer presenting his case before the judge, arguing and contesting the legitimacy of his opponent's claims, not based as much on the documentary evidence that he knows is already in possession of the court, but rather resorting to the rhetorical challenge to his opponent's complaints, at the

32. «(...) et res publica censetur eodem iure, ut .C. De sacrosanctis ecclesiis, Ut inter diuinum. Sed lex dicit in Autenticis, De mandatis principum, quod si imperator aliquid iusserit, uel si mandauerit distinguere, aut leditur respublica ex facto illo aut non. Si leditur non debet ei pareri in prima iussione sed expectari debet secunda iussio, ut per secundam possit sciri quod non fuit circumuentus in prima si eam ratam habet. Ad hoc consonat lex autem de dote quod quamuis prohibitum sit quod constante matrimonio non possit uendi dos, si tamen uendiderit et secundam cautionem emisit ualet alienatio, et ratio redditur quia post primam cautionem potuit habere consilium et habuerit. Et sic presumitur quod ex deliberatione secundam. [...]. Hoc consonat Alexandri in decretali Si quando, ubi dicit quod si aliquid (sic) alicui mandat quod faciat et ille aliqua ratione facere non potest rescribat ei rationem quare non potest illud facere et ille patienter sustinebit [quod non] fecit. Et dicit canon antiquus quod noua uel inaudita non debent subito et sine magna deliberatione fieri, ut Decr. xxiii, Communis (...)». (Annex 1, lines 6-10).

33. «Sic ergo iuste et sine contumacia non est paritum prime iussioni». (Annex 1, line 10).

legal level, by discussing the very nature and rationality of Compostela's argumentation, contesting the legitimacy of the concepts used, and above all, displaying and flaunting the authorities that provided him with legal backing of his defense. In sum, annihilating his opponent's views and accusations, by destroying their sources of authority and thereby proving him wrong.

In order to fend off Compostela's arguments, and especially because he was well aware of the previous papal determinations – most of them unfavourable to Braga – and surely also of the characteristics of Pope Innocent III, Martinho Pires knew that he had to master the art of argument and supplement it with the authority of legal texts, rather than with witnesses and old documents that were still at stake, but which could easily be contested or repudiated as unreliable.

From this point of view, his allegations are an extraordinary document, because it enables us to penetrate the universe of what it really meant to be in front of a papal audience defending your case, and especially of how it could be performed. Most of the bulls issuing sentences on whatever case, describe the history of the causes at their different levels and stages, often providing very detailed accounts of what happened so as to contextualize the verdicts. But rarely are we allowed into the details of the argumentation brought forward and of what the contenders actually did and said when challenging publicly their opponent's claims.

That is precisely what the allegations of archbishop Martinho Pires of Braga enable us to do.

This unusual and important piece of evidence sheds much light on the ways in which a case like this was being tried and which arguments appeared useful for the team of legal experts that assessed archbishop Martinho Pires, himself experienced in legal practice³⁴. In a world in

34. The chapter of Braga had, by the end of the twelfth century, a considerable number of experts in Law, who were active in the service of the curia, from the early 80's of the twelfth century, either as judges delegate or as executors, and many of which would go to Bologna, where they studied and taught, and were active in the service of the curia. In the chapter of Braga alone, in 1199, we can attest the presence of Estêvão Soares da Silva, *magisterscholarum* of Braga in those years, and later on one of the King's councillors and lawyers in Rome, archbishop of Braga from 1212 onwards, as well as of the cantor Magister Menendus, and the dean Godinus, who was still the dean in 1216, when he attested, in the course of an enquiry, that he had studied in Bologna, where he spent some time and had accompanied archbishop Martinho to Rome in this particular instance, adding that Martinho had stayed there for two years (*Bul*, doc 220,392). The 1227 will of archdeacon Magister Martinus, attests to the possession of legal books, including the *Decretum* and a collection of *Decretales*, the *Codex*, the *Instituta*, and the *Digest* (For the data on these men, see Fleisch, *Kirche und Königtum*, 165 and Branco, *Poder Real e Eclesiásticos*, vol. 2, 98-106,

which mastery of the rule of law was paramount to enable any successful ventures on the part of the contenders, the archbishop of Braga knew that it was now imperative that his arguments should not only be well prepared, but resistant to the impacts of his opponent and to a Pope who clearly would not continue to accept his excuses and delays. This piece reveals not only the expertise of those involved in its production, but above all the sensitivity of these same men as to what arguments might prove effective before the papal audience. And shows how prepared and up-to-date they were in that allegedly remote corner of the Iberian Peninsula³⁵.

From what we know of Martinho Pires' previous life and legal practice, he may himself have contributed to the setting up of this well developed and coherent – even if at times very daring – set of arguments, but these allegations reveal above all that the Cathedral of Braga had a considerable number of canons who were also experts in law and able to help set up the archbishop's defence in such a structured form. Experts in both Laws, as the impressive number of references to Roman Law so well illustrate, and quite up to date as well, as the use of the materials inserted in *Compilatio I* a mere eight years after its completion, seems to corroborate³⁶. In this piece, the arguments drawn from Roman Law – the *Codex*, the *Digest*, the *Authenticum* and the *Instituta* – mentioned twenty times, are used in a well balanced way in relation to the references to Canon Law – the *Decretum*, Decretals and Papal Letters, *Compilatio I* – totalling twenty four quotations. In a document that is 134 lines long, this is a very considerable legal apparatus, to which only two (but very substantial) Biblical references were added as source of authority.

142-145). There can be little doubt that the juridical culture of Braga matched the one of Zamora and Compostela, with whom the chapters had much in common, and whose members often served in each other's causes.

35. The arguments he put forward reveal a perfect mastery of argumentation techniques, a profound knowledge of The Bible, Canon and Roman Law, Papal decrees, Royal documents and policies, and the knowledge of all the previous stages of the case under trial, just as much as it reveals the mastery of the formal procedural «code» and all the meanders which might enable them to «bend the law» to their advantage. This should be no surprise after the many works by Linehan on the juridical culture in Western Iberia *maxime* his work on Zamora as a hub for legal experts (Linehan, «The case of the Impugned Chirograph», 465-477). Ingo Fleisch (*Sacerdotium–Regnum–Studium*).

36. None of the copies of Canon and/or Civil Law, which were surely present in the Braga *scriptorium* of the twelfth century and from which these men worked exists any more. They were all lost and therefore we cannot trace exactly from which version Martinho's quotations were taken. With two isolated exceptions, they are, nonetheless, easily identifiable.

The rationale of his reasoning is very interesting too, and divided into three parts. First he tries at great length to prove that in 1197 the Pope had changed the previous rulings in an illegitimate manner, under the influence of a ruse and a legal mistake entirely the responsibility of Pedro Suárez de Deza, himself a canonist. The first part of his argumentation is centred on the events of the previous four years and he tries to prove that his failure to appear before the Pope, demanded in 1194 and again in 1197, when Celestine III had ordered the two episcopates to return to the obedience of Compostela, was perfectly acceptable, and that he had acted correctly. In the first part he uses basically the argument that the Compostelan archbishop could not at that point have taken action against him because there was a case being tried and pendent, and that all the papal rulings were not legitimate or valid, as they had been issued on the basis of false assumptions, and whilst there was a *lite pendente* still not solved. In what we may assume was the second part of these allegations, Martinho proceeds to analyse the reasons why he thinks that Braga is legitimately entitled to both Lisbon and Évora as their suffragans, based on the right of conquest founded by the King of Portugal, legally supported by the papal bull *Manifestis Probatum Est*, as well as by more than forty years of documented evidence concerning the obedience paid by all the bishops of both Lisbon and Évora. The third part of his allegations is devoted to addressing all the items patent in the list of petitions that the Compostelan had brought forward against Braga and answering them item by item. This is where our text ends abruptly, leaving us without any real notion of how much longer these allegations could have continued.

If observed more closely, the text of the allegations of Martinho of Braga reveals some remarkable concepts and strategies that deserve closer scrutiny.

Immediately after having been introduced to the question being addressed in court, we are told that Pedro Suárez de Deza had objected to him, asking why, then, after not appearing when first summoned, he had failed to respond to the second papal letter summoning him to come to Rome either, thus effectively becoming contumacious. The answer was well rehearsed and came sharp and dry: because the first one had been invalid, as the pope had been deceived by the archbishop of Compostela. The second letter was therefore the first that could be regarded as valid, because, unlike the first, it had really resulted from

*certa scientia*³⁷. And thus «*probo per bonum simile*» and after citing a law from the *Digest*, he proceeds to affirm that neither of the occasions on which he had not come to Rome had been contumacious.

«And what else?», he continues. Whilst all this was being challenged, the Compostelan archbishop had impetrated letters on the issue by Urban III and then, whilst that case was still pending, he had managed to obtain Celestine III's papal letters on the same subject, and proceeded to despoil Braga of its bishoprics. And this, according to Martinho, was against the law, against the divine and the human law³⁸.

He was just preparing the audience for his next cards. And those would be an explosive mixture of a considerable apparatus of legal texts deemed favourable to the case being tried, combined with a daring and surprising argument concerning the papal powers that almost proposed limits to the papal capacity to pass incontrovertible sentences.

Would questioning the authority of the papal rulings help to invalidate them? Archbishop Martinho surely must have thought so.

It is nonetheless surprising to recognize how familiar the discussion on the limits of *plenitudo potestatis* and *certa scientia* as the basis for the Pope's issuing of legitimate sentences is to archbishop Martinho Pires, in 1199. Equally relevant is the precocity of his use of the concept of the three natures or *personae* of the Pope as a basis for challenging the same papal capacity. Martinho proposes that unless he is assured on whose authority the Pope was acting whilst passing sentence, whether he was acting as a human person, as God or as judge, he couldn't be sure of whether the ruling was valid. All these arguments played a part in creating a rhetorical structure aimed at the refutation of the archbishop of Compostela's accusations and at the revision of the papal sentences in relation to Lisbon and Évora.

The text deserves to be transcribed in full:

Obicitur: *papa ex certa scientia litteras istas concessit, et potest princeps dare etiam rem alienam sicut suam*, et secutus est ille qui possidet cui donatur. Responsio: *dico papa circumuentus fuit et hoc tibi signum quod in litteris suis nulla sit mencio de commissione*.

37. «(...) Prima ex certa scientia et non ex circumuentione domini pape processisset et quod secunda debeat dici prima (...)» (Annex 1, line 13).

38. «(...) Dicit enim lex humana quod pendente lite nulli licet supplicare, ut aliquid noui ei fiat. Idem dicit Autenticis, Juris (Int...) [...] non licet impetrare sacras formas nouas, nec licet petere a principe ut ius nouum sibi fiat in preiudicium alterius partis. Item dicit canon quod confirmacio in [...] pendentis non ualet, ut xvi, q.vi, Placuit. Item dicit alius canon quod res in litigio posita in nullam debet transferri personam sed omnia in uno statu sint usque ad diffinitionem [...] factum fuerit debet restitui preiudiciis omnibus inde submotis \ut xi ca. q.i, Si res. [...] Ergo debet reuerti ad statum pristinum sine preiudicio nostro (...)» (Annex 1, lines 18-22).

Uerisimile est si ei fuisset de commissione suggestum cur non eas scripsisset aut apposuisset, non obstante illa commissione, cum ista duo similia de iure stare non possint, et quod pendeat lis sub iudice et tales littere optineantur.

Item *si dominus papa ex certa scientia litteras tales scripsit aut fecit hoc animo donandi ut nobis auferret et illi daret, quod facere potuit ex plenitudine potestatis, aut uoluit nouum ius condere, aut uetus iam constitutum imitari, sed donare noluit, ut apparet, ex uerbis litterarum ubi dicitur quod ideo facit quia certum est episcopatus illos ad compostellanam pertinere. Ergo non donare sed quod suam erat ei restituere uoluit.*

Si ius nouum uoluit condere debuit uti nomine derogationis quo {id (del)} antiquo derogaret aut dicere non obstante iure constituto, ut .c. De appellationibus, precipimus in fine, et .D. xviii, Quoniam quidem quia non est uerisimile quod uno uerbo formam iuris tot uigiliis excogitatam ita leuiter uellet peruertere. Si ius antiquum uoluit sequi non fecit quia mihi non confesso, non conuicto, non contumaci, sine aliqua probatione abstulit possessionem. Et dicit canon nos in quemquam sententiam ferre non possumus nisi aut conuictum aut sponte confessum.

Item si dicitur quod ualet quod actum est quia dicitur in litteris certum nobis est quod ad te pertinet, *probo quod adhuc non ualet, quia si fuit ei certum, aut sciuit ut deus, aut ut homo, aut ut iudex.*

Si sciuit ut deus, ergo debuit imitari factum dei in simili casu. Scriptum est: "Si filii dei sumus opera que ipse facit et nos facere debemus", maxime dominus papa qui eius uicem gerit in terris. Sed deus quid fecit? Quamuis sciret uicia sodomorum non tamen eos dampnare uoluit, nisi ei uicium probatum esset, ut. ii. q. I, Deus omnipotens. Item deus sciuit Iudam esse furem et proditorem, tamen noluit eum eicere quia non fuit accusatus.

Si sciuit ut homo debuit monere ut redderet et adhibere secum duos uel \iii/ testes etc. ut dicit dominus in euangelio, ii. q. I, Si peccauerit.

Si dicatur quod sciuit ut iudex, hoc non est uerum quia adhuc lis de hoc pendeat et adhuc pendet, et altera pars contumax non fuit, ergo non potuit contrahi heritodicium (sic) ut uindicaretur altera parte absente. Quid ergo dicemus? Non est uerisimile quod dominus papa qui unicuique debet tribuere quod suum est iuri alicuius uelit derogare. Dicemus ergo eum fuisse circumuentum ex occupatione nimia et ad instanciam aduerse partis hoc contigisse³⁹.

In the space of a few lines we can sense how the figure of the Pope was perceived, his source of authority and limits, and how Martinho Pires scarcely hesitated in denouncing the possible networks of influence working behind the scenes and deceitfully influencing the Pope's decisions.

The Pope was not, of course, being deemed directly culpable of error, but the enunciation of the several different natures under which the Pope might act, some more infallible than others, just as the discussion on the limits of *certa scientia* and the empowerment of *plenitudo potestatis* as the

39. Annex, lines 21-35 (bold are mine).

justification for the creation of new Law, is very relevant. The Pope could think he was acting on *certa scientia*, but that very *certa scientia* could have been distorted by false advice and bad information... the Pope could therefore fail on the grounds that he was a man and therefore subject to the influence of bad councillors.

The concepts weren't new, of course, the idea of the *plenitudo potestatis* of the Pope always went hand in hand with its necessary complement, the role of universal judge (hence the absolute need of the assistance of *certa scientia*) used by the Papacy since very early on. Papal plenitude of power, as has been widely shown, made its early entry as an attribute of papal power in the context of the debate between the judicial authority of the Pope and the bishops, the latter having only the right to judge locally, whereas the Pope had the power to judge universally. Yet after its inclusion in Gratian's *Decretum* the term acquired a new meaning, which Innocent III himself adopted as soon as he was elected, assuming the *plenitudo potestatis* as the power that made him Lord of the Church in all causes. This must be the reason for Martinho Pires' recurrent mention of *plenitudo potestatis* as basis for papal rulings, as well as his attempt to define the role and limits of the concept, and therefore of the papal power itself⁴⁰.

Innocent III and his successors would use it rather to enhance and enlarge the Pope's jurisdiction as universal judge of the Church and even, in the cases in which it was possible, of the remaining secular powers⁴¹.

But it is nonetheless quite surprising to realize how widespread such concepts were in 1199, conceived as the source of papal authority, eventually of the idea of papal monarchy, and especially how in this particular case, the archbishop of Braga managed to combine in the same point three of the most important ideas relevant to his point, i.e., the issuing of a previous papal sentence which he wanted to annul: the plenitude of

40. Benson, «*Plenitudo Potestatis*», retraces the uses and concepts of this formula, from Leo I and Gregory IV, to Gratian and Innocent III, defining how the use of that expression changes, from its original exclusively judicial meaning to Innocent III's interpretation of the formula as the expression of his plenipotentiary powers. As Benson mentions («*Plenitudo Potestatis*», 197), quoting from an Innocent III's letter, included in Liber Extra (X.3.8.4) (1198): «*secundum plenitudinem potestatis de iura possumus iure dispensare...*». Archbishop Martinho in 1199 must have been keenly aware of this.

41. Watt, «The Theory of Papal Monarchy», 220-223, reinforces this idea, when acknowledging that Innocent III didn't coin the expression *plenitudo potestatis* or *iudex ordinarius omnium*, but gave it a new content, and through his use of them was responsible for their introduction and vulgarization in the common law of the Church.

power, the *certa scientia* and the nature of the Pope. Most of contemporary works dealing with *plenitudo potestatis* and the limitations of the powers of the Pope, refer back to the equally ancient formula of the bishop of Rome as *vicarius Dei*, but it is uncommon to see the idea of the Pope as *Deus* himself used in such early texts. The more acrimonious debates on the nature of the Pope, his body and his powers, and the exegesis of the formula «*dominus Deus Noster*» seems to have been preferentially dealt with by fourteenth century polemicists and commentators such as Augustinus Triumphus, Alvarus Pelagius or Zenzelinus, as Gillmann pointed out in his homonymous article of 1915. Jean de Rivi  re and Heinrich Meyer discussed Innocent III's concepts of Pope as *vicarius Dei* and as God himself, on the basis of the texts of Innocent III's papal letters, thereby enabling the question to be addressed in a chronology much closer to the one in which Martinho Pires was giving his major performance before Innocent III or his auditors⁴².

This hearing was taking place before the papal audience in the first years of Innocent III, a time when the Papacy was starting to take the most important steps to affirm in much stronger terms what a papal monarchy might mean, and a Pope who would use his plenitude of power and his *certa scientia* as the basis for many of his sentences, and as the reason why his rulings should override the rulings of his predecessors, using and abusing of imagery in which his role as vicar of God, as pastor of sheep and as cultivator of virtues would be fundamental in papal chancery rhetoric, as the image he projected of himself and his power⁴³.

Martinho Pires must have had a sense of this when, whilst requesting Innocent III to restore what he regards as justice in this case, he refers to Innocent III himself as

42. Gillmann «*Dominus Deus noster papa?*», 265-273, retraces the polemic and correlates it to the religious and political ambiance of its «origins», from the fourteenth century onwards. In 1922, Jean de Rivi  re, in his very brief note «Le pape est-il un Dieu pour Innocent III?» 447-451, repositions the question to the chronology that interests us here, but the main purpose of his article is to refute Heinrich Meyer's theory that Pope Innocent III might have conceived his power as divine, and dismiss the whole idea as impossible in its own time.

43. Paravicini Bagliani has stressed emphatically how Innocent III mastered the art of using all the means (and senses) at his disposal in order to promote papal propaganda and the idea of the supremacy of papal power over all others. See his «Le pouvoir pontifical», 15-20, as well as his *The Pope's Body*, maxime 58-71 and 215-219, where the *persona Christi* of the Pope as well as the relationship between apostolicity and Plenitude of power in the imagery of the body is prominently displayed.

[...] dominus papa qui nunc sedet, quem deus posuit medium inter litigia, qui neque ad dexteram neque ad sinistram in omnibus factis suis debuit declinare, cuius est euellere et plantare, ipse (sic) quod male actum est emendet et litteras tales reuocet et quicquid auctoritate earum factum est irritum iudicet et nobis possessionem restituat, et postea respondebimus⁴⁴.

Could the archbishop of Braga have had access to Innocent III's sermon on the day of his accession, when he spoke of his own papal power resorting to a terminology so close to this one⁴⁵? The allegations of the archbishop of Braga remind us permanently of the contradictions of a society and times in which Popes were reaffirming their wish to become more and more active in every scene, especially through their role as universal court of appeal, but in a time in which neither kings nor emperors, in similar processes of political affirmation, were prepared to accept such novelty without a fight. The same might be said of many ecclesiastics and canonists.

The attentive analysis of the apparatus of sources and references used by the archbishop of Braga enlightens us in a particularly eloquent manner as to what the preparation of the men who assisted him was, but the resources used in the argumentation reveal nonetheless a familiarity with the use and abuse of Law and its mechanisms, that remind us of what Linehan found for Zamora and their juridical knowledge and practice in very similar geographical and chronological coordinates. The men who prepared these arguments were not only well acquainted with the texts used as legal authority, they were also well practiced in employing them in the context of a persuasive and efficient discourse, the language of court disputes.

The array of proof that Martinho Pires further employed included references to papal and royal privileges and to corresponding policies. This was to be particularly relevant in the case of Lisbon and Évora, restored by the King of Portugal respectively 32 and 13 years before he had received the 1179 *Manifestis Probatum Est* bull that legitimized him as king, and Portugal as kingdom, and provided papal protection to all his conquests from the Muslim rulers.

Of course, in 1199, the archbishop of Braga had two advantages that none of his pre-1179 colleagues could have had. The first one was the simple fact that he could claim to have a legal text to back his defence,

44. Annex, lines 40-42.

45. Luchaire, «A Realistic ascends the Papal throne», 30-31.

and one that came from the papacy itself, providing «his» King with a free hand to rule over the territories he conquered. And the second one was the fact that he was well acquainted with the text of that bull and its implications, having been personally involved with its confirmation to King Sancho I of Portugal, in 1190 and involved in the King's conquest and restoration of Silves in 1189. But to try and retro-project so far into the past the legal argument of the entitlement of the king to restore the two dioceses after conquest and to put them under the jurisdiction of the metropolitan of Braga at a time when such document had not yet been issued is very astute, although highly risky.

Both the Pope and the Compostelan archbishop promoted the thesis that the archbishops of Braga had been cooperative in the past, and had recognized that Lisbon and Évora should really be subordinate to Compostela and that the first two kings of Portugal had been primarily responsible for the troubles caused by the noncompliance of the bishops in refusing such obedience. Martinho Pires, however, contradicted such views in his allegations, by reaffirming the superiority of the right of conquest as the basis for restoration, and did so using the words and concepts present in *Manifestis Probatum Est* issued by the Papacy itself. In the text of the definitive sentence we are told that the archbishop had mentioned that the king conquered the town and restored the sees with the power given to him by the right of conquest and the wish to restore the Christian faith⁴⁶. But in the text of the allegations, we are introduced to a far more detailed development of this idea, as it may have been presented during the audience:

(...) Accidit ergo quod olim domnus Alfonsus bone memorie portugalie rex qui antea infans uocabatur in tantum (?) terram illam dilatauit et de ea regnum latum et spaciosum fecit et ab hac sacrosancta sede de infante meruit rex uocari, propter cuius strenuitatem et meritorum dotem concessionem a romana ecclesia per priuilegium obtinuit quod nulla ecclesiastica persona ab (...) est in regno suo iurisdictionem uel potestatem aliquam haberet nisi papa uel eius legatus. Obtinuit item quod quamcumque terram a sarracenis occupasset propter exaltationem fidei quam de [...] tum dilatauerat sarracenis opprimendo et eos per archiepiscopum suum bracarensem ad fidem conuertendo cuicumque uellet posset supponere ecclesias. Factum est igitur quod inter alias multas terras quas abstulit sarracenis hos duos episcopatus de quibus agitur de manibus ipsorum liberauit et per bracarensem archiepiscopum gentes illas ad fidem conuertit. Qui enim archiepiscopus in occupacione

46. «(...) ad cultum fidei christiane per Bracarenis archiepiscopi predicationem reducte et jure suo sic usum archiepiscopum Bracarensem asserebat tibi aliquatenus injuriam non fecisse» (Bul. 45, p. 71).

illius terre multas expensas fecerat in expetitione (sic) eundo cum rege sicut mos et consuetudo est terre illius, et ob hoc multas possessiones bracarensis ecclesie pignerari obligavit quas pro parte nondum redimere potuit. *Bracarensis ergo archiepiscopus ex concessione regis cui privilegium datum fuerat episcopos illius terre iure suo consecrauit. Quadraginta iiij^{or} annis Ulixbonensem episcopatum possedit et a paruo tempore postmodum Elborensem similiter ex concessione regia et iure suo sub iurisdictione sua ex tunc retinuit ac possedit (...)*⁴⁷.

This is an important historiographical narrative, that sums up the historical and the legal arguments, shrewdly bonding several arguments in one: not only had the conquest of Lisbon and Évora taken place under papal protection and in accordance with a papal bull that granted the king the legitimate right to act without any other lord except the Pope and his legates, but the conquest had happened forty-four years earlier, and in Évora «shortly thereafter». This chronology, approximately correct for the case of Lisbon, invoked the argument of the forty years prescription of a certain use to further Braga's ambitions. So on those two grounds, the obedience of Lisbon and Évora to Braga were perfectly legitimate, even if legally suspicious, because they had been effective for more than forty years. No wonder if in this text the conquest of Évora, which actually happened nineteen years later than that of Lisbon, is made to have happened «*paruo tempore postmodum*».

The archbishop proceeded then to mention the fact that he possessed the documents of obedience of all the bishops of Lisbon until then, naming them by their individual names and of the ones of Évora too, although not specifying this to the same extent. Indeed, he possessed such written evidence of obedience, as the documents he mentioned had in fact been copied in the cartulary of Braga called *Liber Fidei*, where they can still be found.

So if on the one hand he was trying to use the text of the *Manifestis Probatum* and their arguments as a source of canonical law for providing the king with a juridical capacity which would thus legitimize actions otherwise difficult to justify, like providing reconquered sees with bishops nominated by the king and his archbishop, and obviously restoring them in the archbishopric of his kingdom, on the other hand the continued practice of such obedience added a further degree of lawfulness and legitimacy to the *de facto* situation of these two bishoprics in a permanent state of divided jurisdictions and loyalties.

47. Annex 1, lines 70-76.

And on such grounds the archbishop reaffirmed that he couldn't understand doubts on the question of under whose jurisdiction Lisbon and Évora should fall.

Martinho Pires' argumentation proceeded in a gentler tone when he reached the stage of contesting the list of accusations, and the legal argumentation becomes much more repetitive than it had been until this point. Although the document that we have is incomplete, we may probably surmise that it would continue to re-enact similar arguments.

In the end, all this hard work, expertise and effort did not succeed in securing Lisbon and Évora for Braga. Perhaps not surprisingly, considering that the archbishop of Braga had tried to defend his cause by destroying each and every Compostelan argument, but also by undermining, in very troubling terms, papal authority, the limits of its *plenitudo potestatis* and the credibility of the pope's *certa scientia*. Perhaps proposing that the Pope could be circumvented, attacking papal authority and defending the King's rights in his Kingdom was not such a clever strategy, after all.

Archbishop Martinho was used to risk and probably felt that, once more, he needed to try and resort to it. He continued to use his shrewdness in order to avoid addressing the less easy answers in the presence of the Pope and his opponent. This characteristic is very apparent in the text of the allegations, a real monument to the legal capacity of Braga and its canons. But it is also reflected in the 1199 bull that Innocent III issued with the definitive sentence on Lisbon and Évora, granting them to Compostela⁴⁸. At a certain point, we are told in the reporting of the process, that Martinho, when asked, under oath, whether he knew if any of his predecessors had ordered the bishops of Lisbon and Évora to pay obedience to Compostela, including Godinus – who had done so, in 1177 – answered: «...*Quidem dicunt sic quidam non, et ideo nescio quibus credam. Et addidit postea: Nec inde certus sum nec incertus*»⁴⁹.

Typical. He was neither sure, nor unsure... Yet Pope Innocent III must have been quite sure of what was happening in 1199 in Rome, and consequently proceeded to determine that from then onwards, both dioceses should forever pay obedience to Compostela.

As usual, reality would show that any definitive sentence was very hard to implement, and in this case even more so, due to the political implications that such obedience carried with it.

48. *Bul.*, doc. 45, 69-74.

49. *Bul.*, 72.

Perhaps that thought, and the practical experience that there was really no such thing as a definitive papal sentence in those times, may have served as a minor consolation to the defeated champion of Braga. Martinho Pires would only die in 1209. He therefore still had enough time to testify that his defeat in the papal curia of the young Innocent III was not to be the end of the affair⁵⁰.

APPENDIX

Transcription Criteria

1. Transcription is done in a continuous line, marking line changes of the original document with a vertical slash, followed by the line number.
2. Abbreviations were developed, but without underlining any of those developments.
3. Quotations of Canon and Roman Law were modernised, although maintaining the original form for numerals.
3. Original orthography was kept unaltered, except for the use of capital and minuscule letters and punctuation, which were modernised, separating words that were incorrectly together and reuniting syllables or letters in words in which they had been wrongly separated.
4. Words which were erased or cut off in the original were identified through [(*ras*)].
5. Illegible words were identified by [...] without mention of the number of illegible characters.
6. Hypothetical readings were identified by { }.

50. It is surely appropriate to publish the 1199 *allegationes* of archbishop Martinho Pires in a volume commemorating Peter Linehan's work and contribution to our knowledge and understanding of the Iberian Middle Ages. Not only is it's subject close to Linehan's research interests, but there is also the fact that he knows this document quite well and that we have spent many hours together discussing its intricacies and difficulties. The first transcript of this text was done in the Archive of Braga, in 1997, when both I and Linehan coincided in that archive, me in the process of gathering evidence for my PhD thesis, and Linehan in the process of compiling papal materials for what would later become his *Portugalia Pontificia*. With his characteristic generosity, Peter helped me in my first steps through the world of papal documents and diplomatics, explained many things unknown to the young researcher that I was then, and puzzled over it with me, as if he didn't have better things to do. In retrospect, anyone would say that twenty years is a long time to wait before publishing a document. But perhaps this is as it was meant to be, and perhaps these allegations of the energetic archbishop of Braga didn't want to come to light – obstinate as documents can be – except in a work that celebrates the work of an academic who specialises in uncovering the secrets of the lives of both medieval documents and medieval men. I also wish to thank the editors, especially Francisco Hernández, for their support, patience and generosity. Further thanks are due to dear Hugh Denman, who revised and improved my English with his competent surgical eye. All the faults that it surely still has are obviously of my responsibility.

7. Errors in the original text were identified by (*sic*) after each of those errors.
8. Overwritings or insertions were identified by \ /.
9. Dubious readings were identified by (?).

1199⁵¹

Allegations presented in Rome against Compostela, by Martinho Pires, archbishop of Braga, on the question of the possession of the bishoprics of Lisbon and Évora

Original: ADBraga, *Gaveta dos Arcebispos*, n° 41 (incomplete scroll made up of two sewn parchment membranes of 250×300 and 250×400). Damaged in parts, which make some parts illegible) Verso of parchment: *Allegationes bracarensis ecclesie super ulixbonensi et elborensi episcopatibus*.

Ed.: Peter Feige, «Die Anfänge des portugiesischen Königtums und seiner Landeskirche», *Spanische Forschungen der Görresgesellschaft*, 29 (1978) 391-395. His edition corresponds to lines 1-3, 15-16, 67-76 and 82 of the original document; Maria João Branco, *Poder Real e Eclesiásticos: a evolução do conceito de soberania régia e a sua relação com a praxis política de Sancho I e Afonso II*. (unpublished PhD thesis) (Lisbon, 1999) 2: 7-28.

Reg.: Peter Linehan, *Portugalia Pontificia. Materials for the History of Portugal and the Papacy, (1198-1417)*, (Lisbon, 2013) I: 101.

Super Ulixbonensi et Elborensi episcopatibus nolumus stare in causa nec super eis respondere et si aliquid dixerimus forte quod potest uideri alicui pertinere ad causam de episcopatibus illis sine ¹² preiudicio nostro dicemus quia sic ius nostrum protestamur.

Quia pendente lite spoliavit nos prout confessus coram uobis fuit et petimus restitutionem in primis, ut inferius plenius ¹³ dicetur. Dominus Compostellanus legit multas litteras summorum pontificum scriptas illis duobus episcopis elborensi et ulixbonensi quod ipsi obedirent compostellano. Quibus sic responsio uero uestra (*sic*) ¹⁴ est quod preceptum fuit eis quod ei obedirent semel ab uno papa. Sed illud fuit nouum et inauditum quod sine ordine iuris una preceptione deberet ledi ita grauiter ecclesia bracarensis [...] ¹⁵ et res publica censetur eodem iure, ut .C. *De sacrosanctis ecclesiis, Ut inter diuinum*⁵². Sed lex dicit in Autenticis, *De mandatis principum*⁵³, quod si imperator aliquid iusserit, uel si mandauerit ¹⁶ distinguere, aut leditur respublica ex facto illo aut non. Si leditur non debet ei pareri in prima iussione sed expectari debet secunda iussio, ut per secundam possit sciri quod non fuit circum- ¹⁷ uentus in prima si eam ratam habet. Ad hoc consonat lex autem de dote quod quamuis prohibitum sit quod constante matrimonio non possit uendi dos, si tamen uendiderit et secundam cautionem ¹⁸ emiseric ualet alienatio, et ratio redditur quia post primam cautionem potuit habere consilium et habuerit. Et sic pre-

51. Due to the fact that this document precedes Innocent III's allegedly final sentence of 1199 on this question, the text has traditionally been critically dated from around 1189-1199. Yet the original document actually tells us that it was written in the year 1199 (end of line 132: «*cum Era modo currat M. cc. xxx. Vii*» – a detail that has hitherto been unnoticed).

52. *Cod.* 1.2.23.

53. *Cod.* 1.15.2.

sumitur quod ex deliberatione secundam. [...]. Hoc consonat Alexandri in decretali ¹⁹ *Si quando*⁵⁴, ubi dicit quod si aliquid (*sic*) alicui mandat quod faciat et ille aliqua ratione facere non potest rescribat ei rationem quare non potest illud facere et ille pacienter sustinebit [quod non] fecit. Et dicit canon antiquus ¹¹⁰ quod noua uel inaudita non debent subito et sine magna deliberatione fieri, ut *Decr.* xxiii, *Communis*⁵⁵. Sic ergo iuste et sine contumacia non est paritum prime iussioni.

Obicitur ab aduersa ¹¹¹ parte, secunda iussio secuta est. Ergo secundum te secunde per contumaciam paritum non fuit. Responsio: dico quod et secunde non debuit pareri sicut nec prime, quia illa secunda fuit prima quia alius misit primam ¹¹² et alius secundam. Ergo utraque fuit prima quantum ad suum preceptorem, et sic ex secunda non potuit perpendi quod prima ex certa scientia et non ex circunventione domini pape processisset et quod secunda de- ¹¹³ beat dici prima. In hoc casu probo per bonum simile. Si enim iudex citauerit partes tribus edictis uel uno pro omnibus peremptorio et moriatur secundus, successor non reputabit [...] ¹¹⁴ sic citatum si non uenerit immo debet ipse eum de nouo citare, ut *Dig. De iudiciis*⁵⁶. Ergo non fuit contumacia si neuter parebatur.

Sed quid plura? Ab istis preceptionibus postea recessum est ¹¹⁵ de uoluntate ipsius domini compostellani, quia ipse litteras impetrauit a domno Urbano⁵⁷, et de causa illa agitatum fuit et pendente illa commissione impetrauit litteras alias a domno ¹¹⁶ Celestino⁵⁸ precipientes illis ut ei obedirent, quarum [u]ilencia (*sic*) et

54. 1 *Comp.* I.2.5; (X.1.3.5.). Decretal *Si quando*, inserted in *Compilatio I*, under the heading *De rescriptis*. In that decretal, Alexander III does in fact stress the recommendations to which the archbishop is referring to. This confirms the early reception of *Comp. I* in Portugal.

55. *Decretum*, D. 23, c. 10. In fact, this particular chapter deals with the question of bishops and deacons wearing dalmatics without apostolic permission. The solution proposed here is that nothing should be done without superior authorisation (*novum hoc inconsulte et subito non permetteret indulgere*). Yet none of this sequence or formulation is in Gracian, at least in the received recension that we use.

56. *Dig.* 5.1. This is the title containing the laws on places and procedures to which the judges have to comply. It was not possible to define to which of those the archbishop of Braga was referring to in this particular quotation.

57. He is surely referring to the letters of comission sent by Urban III, when he nominated *vicedominus* John of Brescia and Master J. of Bergamo (*Quanto de prudentia*, 13 of April 1186 – see Erdmann, *PUP*: 297-299) as judges delegate. In that letter the Pope recalled the cause to which they had been assigned and mentions an appeal by the archbishop of Compostela. The Pope then assures them of His confidence and faith in their capacity, and entrusts them with the mission of finding out the truth of the matter and, *appellatione postposita*, give a definitive sentence. He furthermore ordered them to instruct all the necessary enquiries of witnesses and procedural pieces considered necessary. Reports with the detailed minutes of such meetings are published in Erdmann, *PUP*, 303-324.

58. On the 27 May 1194 Pope Celestine III in his bull *Significavit nobis* (Erdmann, *PUP*: 358-359) had defended encomiastically the war efforts of Sancho I and his archbishop, who was said to be unable to attend to this matter because he was siding his King in the war being fought at the same time. Using that reason as an excuse, the Pope granted the archbishop of Braga the privilege of delaying his participation in the judgement of the case between Braga and Compostela on the bishoprics of Lisbon and Évora until the fight was over, so that he could, in the meantime, accompany his King in the war and receive the Papal Legate for the Spanish Kingdoms, cardinal Gregory of Sant'Angelo. But in this particular point of the allegations, the arch-

(*ras.*)] auctoritate spoliavit nos, uno (*sic*) eorum prout dicit et reliquo nititur et nisus est spoliare ius ipse [...] ¹¹⁷ \servauit licet id non probet/ iura tam diuina quam humana.

Dicit enim lex humana quod pendente lite nulli licet supplicare, ut aliquid noui ei fiat. Idem dicit *Autenticis, Juris (Int...)*⁵⁹ {...} *non licet impe-* ¹¹⁸ *trare sacras formas nouas*, nec licet petere a principe ut ius nouum sibi fiat in preiudicium alterius partis. Item dicit canon quod confirmacio in [...] pendente ¹¹⁹ non ualet, ut xvi, q.vi, *Placuit*⁶⁰. Item dicit alius canon⁶¹ quod res in litigio posita in nullam debet transferri personam sed omnia in uno statu sint usque ad diffinitionem [...] ¹²⁰ factum fuerit debet restitui preiudiciis omnibus inde submotis \ut xi ca. q.i, *Si res*⁶²/ Sed constat ut ex confessione eius habuistis quod res de qua agitur litigiosa fuit et translata est in aliam partem. Ergo debet reuer- ¹²¹ti ad statum pristinum sine preiudicio nostro.

Obicitur: papa ex certa scientia litteras istas concessit, et potest princeps dare etiam rem alienam sicut suam, et secutus est ille qui possidet cui do-¹²²natur. Responsio: dico papa circumuentus fuit et hoc tibi signum quod in litteris suis nulla sit mencio de commissione. Uerisimile est si ei fuisset de commissione suggestum cur non eas scripsisset ¹²³ aut apposuisset, non obstante illa commissione, cum ista duo similia de iure stare non possint, et quod pendeat lis sub iudice et tales littere optineantur. Item si dominus papa ex ¹²⁴ certa scientia litteras tales scripsit aut fecit hoc animo donandi ut nobis auferret et illi daret, quod facere potuit ex plenitudine potestatis, aut uoluit nouum ius condere aut ¹²⁵ uetus iam constitutum imitari, sed donare noluit, ut apparet, ex uerbis litterarum ubi dicitur quod ideo facit quia certum est episcopatus illos ad compostellanam pertinere. Ergo non donare sed quod suam erat ¹²⁶ ei restituere uoluit. Si ius nouum uoluit condere debuit uti nomine derogationis quo \ [id (*del*)] antiquo derogaret aut dicere non obstante iure constituto, ut .c. *De appellationibus*⁶³ ¹²⁷ precipimus in fine, et .D. xviii, *Quoniam quidem*⁶⁴, quia non est uerisimile quod uno uerbo formam iuris tot

bishop is surely referring rather to the bull issued on 26 January 1197, *Pastoralis officii*, (Erdmann, *PUP*, 375-376), where it is mentioned that archbishop Godinus of Braga had conceded to Compostela that Lisbon and Évora should be Compostela's suffragans. Obviously, Martinho Pires now saw it as his duty to try and annul the effects of such concessions.

59. It wasn't possible to find the correct reference for this quotation.

60. *Decretum*, C. 16, q. 6, c. 1. This c. deals with the questions relating to causes involving churches, plebs and bishops belonging to the cathedral, which might be appropriated by the other party involved. But the sequence and formulation in Gratian is not as reported here.

61. *Decretum*, C. 11, q. 1, c. 50.

62. *Decretum*, C. 11, q. 1, c. 50. The quotation cited here by the archbishop does not coincide with the text of Friedberg's edition, whose lesson is *Quia res*. This feature reappears several times through the text. It is not possible at the moment to know whether this is a copyist's error or rather a different version being used by the jurists working in Braga. In fact, at this exact point, the archbishop is allegedly quoting almost literally from the next chapter of the *Decretum*: «*Quia res in litigio posita in nullam transferri potest (...) sed in eodem statu re eadem posita, in quo uidetur (sicut dictum est) ante constituta, quisquis sibi putat quippiam posse competere, iurisdico pulset examine, preiudiciis omnibus inde submotis*» (*apud* E. Friedberg, *CICan*, 1: 642).

63. 1 *Comp.* II. 20. (X.2.28.11). See *Cod.* 7.62.32.

64. *Decretum*, D. 18, c. 7.

uigiliis excogitatam ita leuiter uellet peruertere. Si ius antiquum uoluit sequi non ¹²⁸ fecit quia mihi non confesso, non conuicto, non contumaci, sine aliqua probatione abstulit possessionem⁶⁵. Et dicit canon nos in quemquam sententiam ferre non possumus nisi aut conuictum aut sponte confessum⁶⁶. ¹²⁹

Item si dicitur quod ualet quod actum est quia dicitur in litteris certum nobis est quod ad te pertinet, probo quod adhuc non ualet, quia si fuit ei certum aut sciuit ut deus aut ut homo aut ut iudex. Si ¹³⁰ sciuit ut deus, ergo debuit imitari factum dei in simili casu. Scriptum est: «Si filii dei sumus opera que ipse facit et nos facere debemus»⁶⁷, maxime dominus papa qui eius uicem gerit in terris. Sed ¹³¹ deus quid fecit? Quamuis sciret uicia sodomorum non tamen eos dampnare uoluit, nisi ei uicium probatum esset, ut. ii. q. I, *Deus omnipotens*⁶⁸. Item deus sciuit Iudam esse furem et proditorem, tamen ¹³² noluit eum eicere quia non fuit accusatus. Si sciuit ut homo debuit monere ut redderet et adhibere secum duos uel *viii*/ testes etc. ut dicit dominus in euangelio⁶⁹, ii. q. I, *Si peccauerit*⁷⁰. Si ¹³³ dicatur quod sciuit ut iudex, hoc non est uerum quia adhuc lis de hoc pendebat et adhuc pendet, et altera pars contumax non fuit, ergo non potuit contrahi herediticium (*sic*) ut uindicare- ¹³⁴ tur altera parte absente.

Quid ergo dicemus? Non est uerisimile quod dominus papa qui unicuique debet tribuere quod suum est iuri alicuius uelit derogare. Dicemus ergo eum fuisse circumuentum ex occu- ¹³⁵ pacione nimia et ad instanciam aduerse partis hoc contigisse. Unde auctoritas tam iniqua eum potius grauat quam dominum papam, et potius repellendus est quam iuuandus, sicut is qui ante adi- ¹³⁶ tam hereditatem contra ius, rei sibi legate per pretorem possessionem accipit non iuuatur auctoritate quominus restituat possessionem interdicto quorum legatorum, ut Dig. *Quorum legatorum*. I, i, § *Quod*⁷¹, ¹³⁷ et sicut fas qui rem iudicatam pro se allegat pro quo per gratiam iudicatum est repellitur, ut Dig. *De legatis*. I, *Si seruus plurium*, § *i*⁷². Nam quod dicitur error principis ius facit, uerum est presumpti- ¹³⁸ ue, sicut error esse[t] prima facie/ ius facit sed ueritate reuelata, error omnis cedere debet ueritatis (*sic*) ut viii. D. per totum⁷³, presertim quia cum postea peteret nos citari super illis

65. *Decretum*, C. 1 q. 4 c. 13

66. *Decretum*, C. 2 q. 1 c. 1. Literal quotation.

67. Jo. 8:39.

68. *Decretum*, C. 2, q. 1, c. 20. This c. explains how the sentences must not be given hastily, and in order to illuminate this point the example offered of God faced with the dilemma of what to do with Sodom. God himself did not judge before making sure that there wasn't one single just man in town.

69. Matt. 18:16, *apud Decretum*, C. 11, q. 3, c. 3.

70. *Decretum*, C. 2, q. 1, c. 19. It analyses how to deal with sin, proposing one shouldn't be judged and condemned only on its demerits.

71. Dig., 43.3.1, *Quod legatorum*. Note what is said in the quoted piece: «Quod ait praetor uoluntate eius ad quem ea res pertinent ita erit interpretandum, ut si post aditam hereditatem vel bonorum ve possessionem adgnitam uoluntas accomodata est legatario, ut possideret, interdictum cesset; quod si ante aditam hereditatem bonorum ve possessionem adgnitam hoc factum est rectius dicitur eam uoluntatem non nocere debere».

72. Dig. 30.1.50.

73. *Decretum*, D. 8, all. This must be the correct sense of this quotation. In fact the whole of D. 8 is about the question of the superiority of the «Revealed Truth» over the laws of the prince

episcopatibus. ¹³⁹ Ergo renuit beneficium illarum litterarum. Aliter diceremus quod iniuste factum sit, et dicit canon quod quis commisit illicite uel antecessoribus suis commissum inuenerit emendare [eius] oppor- ¹⁴⁰ tebit⁷⁴ si proprium periculum uitare uoluerit. Ergo dominus papa qui nunc sedet, quem deus posuit medium inter litigia, qui neque ad dexteram neque ad sinistram in omnibus factis suis deb- ¹⁴¹ uit declinare, cuius est euellere et plantare, ipse (*sic*) quod male actum est emendet et litteras tales reuocet et quicquid auctoritate earum factum est irritum iudicet et nobis possessionem resti- ¹⁴² tuat, et postea respondebimus.

Sed obicitur: dominus Gregorius Sancti Angeli diaconus cardinalis factum episcopi et professionem quam fecit auctoritate litterarum confirmauit, ergo reuocari ¹⁴³ debet. Responsio: si littere iniuste, ergo quicquid ex eis uel ob eas secutum est iniustum, ergo confirmatio nulla. Item aliam exceptionem opponimus quod respondere non tenemur, eo quod pendente ¹⁴⁴ lite nos parte diocesis nostre uidelicet de terra de Alisti spoliavit, et quadam uilla ibidem, super quo initio causarum, sicut memor estis, coram uobis dedit responsum. Et ideo respondere non com- ¹⁴⁵ pellimur quia spoliatus spoliatori ante restitutionem respondere non debet. Et aduersus nos habet necesse se defendere si uult, quod nos ei respondere teneamur, ut Dig. *De iudiciis*, l. ii ⁷⁵. Si enim is ¹⁴⁶ qui petit restitutionem ante omnia est audiendus quis multo fortius excipiendo hoc proponere possumus non teneri alicui respondere ante restitutionem. Nam cui damus actionem [...] ¹⁴⁷ multo potius competere exceptionem quis dixerit, ut. Dig. (*De superficiebus*, l. I, § *Quod ait*) ⁷⁶. Sed replicant aduersarii nobis hoc non prodesse quia post litem contestatam accidere [...] in quo post] ¹⁴⁸ litem contestatam accidunt in iudicium non ueniunt sed noua interpellatione opus est, ut. Dig. *De iudiciis*, *Non uidetur* ⁷⁷. Responsio: hanc regulam ita intelligi [...] ut lite ad X [...] ¹⁴⁹ ea tibi mutuaui licet post litem contestatam, X. mihi debere incipias quia promisisti dono tamen ex priori iudicio non est condemnandus quia alia noua causa nos nouam [...] ut ¹⁵⁰ Dig. *De exceptione rei iudicate*, *Si mater* ⁷⁸, § *At si*. et l. Et ante quamcumque actionem quis semel in iudicium [deductus] usque ad sententiam eam persequi teneretur [...]. Qui sciuit res (?) quo ¹⁵¹ modo et quando iudex et ita illud intelligitur, quod non uenit in iudicium quod post litem contestatam decidit iure accionis. Sed iudicis [...] uenit, ut Dig. *De Aedilatio* [edicto], ¹⁵² item Sciendum, § *Ultimus* ⁷⁹. Item illa intelliguntur ex parte actoris et immo dicitur noua interpellatione opus est quia interpellatio ex parte actoris proponitur, aliud ex parte rei, nam rei fauo- ¹⁵³ rabiliores sunt, ut Dig. *De*

or customary law. In Gratian's words: «Differt enim ius naturae a consuetudine et constitutione» (Friedberg, *CICan*, v. I, col. 12).

74. Cf. *Decretum*, C. 35, q. 9, c. 3: «...illicite aut a predecessoribus suis inuenit (var. inuenerit) admissum si proprium periculum uult uitare».

75. Dig. 5.1.2.

76. Dig. 43.18.1.3.

77. Dig. 5.1.3. ou 5.1.33. However, none of these references seems to have any connection with what is being said.

78. Dig., 44.2.11. *At si ex alia*. This paragraph deals with the issue of inherited estate, with clauses limiting the owner's entitlement to possession and make the possession disputable.

79. Dig. 21.1.1.3 or 21.1.19.4.

*regulis iuris, Fauorabiliores*⁸⁰. Item illud, ut dictum est, unum ad agendum, aliud ad excipiendum, quis enim fatuus dixerit? Si cum X a me pecieris que tibi debeo et ante sententiam pactum ¹⁵⁴ de non petendo facias quod ex hoc pacto non sim condemnandus immo absoluendus. Item .X. a me pecis que debeo, et quia a me subripis uel rapis uel alio modo etiam incipis debere nonne compensare [...] -isum ¹⁵⁵ et certe sic licet compensationis exceptio dilatoria sit. Ergo in omni euentu expoliationis exceptio me tueri debet.

Unde ante omnia restitutionem peto archidiaconatus de terra Alisti, ¹⁵⁶ et de episcopatu Ulixbonense quo me expoliavit per obedienciam sibi factam, sicut dicit, et in iure coram auditoribus cartam eiusdem obediencie legit. Unde quicquid dicatis processit ius meum, ¹⁵⁷ quia non debet mihi nocere quicquid de causa principali dixero ante restitutionem mihi factam. Item dicit compostellanus quod super iniuriis facta fuit illa commissio super illis duobus episcopatibus, et hoc ¹⁵⁸ confessus est et asseruit in iure sepe. Ergo auctoritate illius non potest agi ut possessio petatur. Ergo nec ex ea potest petere possessionem ad inferius. Sed ponamus quod possit uariare et dicat quod facta fuerit ¹⁵⁹ super possessione, conclusum est ei statim, quia ipse impetrauit illam commissionem, et illa ommissa (*sic*) postea conuolauit ad auxilium contrarium, quia a domino papa ut dictum est litteras impetrauit. Quarum auctoritate, ut dictum est, ¹⁶⁰ possessionem ulixbonensem, ut dicit, obtinuit et etiam Elborensem sicut quod Ulixbonensem fecit ei obedienciam et professionem, et Elborensem suspendit et ipse aliquandiu suspensionem seruauit, prout dicit nec tamen probat. ¹⁶¹ Ergo a commissione priori recessit. Ergo ex ea amplius nichil petere potest quia ista duo se non patiuntur quod commissio super his duobus pendeat quantum ad ipsum et quod obtinuerit quod ex ea petebat, quia si opti- ¹⁶² net quod ex commissione petebatur, amplius peticio sua ulla est, quia quod habet petere non posset, et si ea petere non potest, illa non ei ualet. Ergo sic intelligitur ei renunciasse. Et lex dicit \et/ regula iuris antiqui est⁸¹, quod cuilibet licet re- ¹⁶³ nunciare iuri quod per se est introductum quia autem non possit quis ex contrariis rationibus similiter consequi ius suum. Dicit lex: serui mei dederunt pecuniam meam Ticio ut emeret sibi ex ea. Ticius emit. Habeo optionem habendi ratum ¹⁶⁴ mandatum serui mei ut agam contra Ticium mandati uel si uolo habere ratum agam contra eum furti, sed utraque actione agere non possum, et si egero una non admittat ad aliam quia duo contraria ex hoc prouenirent uel quod haberem ratum ¹⁶⁵ tum et quod non haberem ratum, ut C. *De furtis*, lege. i⁸².

Item allegat quamuis forte ex commissione petere non possim, tamen ex litteris domini Celestini. Peto quod mandetur executioni quod ipse mandauit. Respondeo quod de alia possessione non est iudi-¹⁶⁶canda nisi de ea de qua lis contestata est per commissionem sicut interlocutus fuistis nec de aliis esse pronunciandus nisi de his

80. *Dig.* 50.17.125.

81. It was not possible to find the source for this quotation.

82. *Cod.* 6.2.1. In title *De furtis et seruo corrupto*, law 2 mentions precisely the case here at stake. It is a purchase made with someone else's money, servants using their lord's money to buy *praedia*. It is very clear how the author feels that it is necessary to choose which of the two crimes it is necessary to act upon, whether on the robbery or on the abusive purchase.

que petita sunt in libello. Licet hoc nobis obesse non debeat super restitutione nobis facienda et reuocatione litterarum que in modo proponimus ¹⁶⁷ exceptionis sicut superius est allegatum.

Item si domnus Celestinus, ut ipse dicit, diffiniuit causam istam ex certa scientia ergo finem ei imposuit. Ergo non est uerisimile, immo non est uerum, quod citauerit nos ob eam causam diffiniendam cum iam diffinita ¹⁶⁸ sit. Ergo ob hanc causam non uenimus et sic habemus ius reuocandi domnum et opus est noua citatione sicut domnus papa eleganter est interlocutus in causa V. episcopatum. Quia uero saluis exceptionibus uestris [...] ad principalem causam, uidelicet ¹⁶⁹ iniuriarum, transire iussistis ideo factum super Ulixbonensi et Elborensi episcopatibus taliter proponimus.

In primis protestantes ne per hoc circa proprietatem aliquod nobis fiat preiudicium quia non ad hoc proponimus (?) sicut per iniurias, de ¹⁷⁰ quibus est actum repellere et intencionem aduersarii \facilius/ elidere possimus. Accidit ergo quod olim domnus Alfonsus bone memorie portugalie rex qui antea infans uocabatur in tantum (?) terram illam dilatauit et de ea reg- ¹⁷¹ num latum et spaciosum fecit et ab hac sacrosancta sede de infante meruit rex uocari, propter cuius strenuitatem et meritum dotem concessionem a romana ecclesia per priuilegium obtinuit quod nulla ecclesiastica persona ¹⁷² ab [...] est in regno suo iurisdictionem uel potestatem aliquam haberet nisi papa uel eius legatus⁸³. Obtinuit item quod quamcumque terram a sarracenis occupasset propter exaltationem fidei quam de [...] tum dilatauerat ¹⁷³ sarracenos opprimendo et eos per archiepiscopum suum bracarensem ad fidem conuertendo cuicumque uellet posset supponere ecclesias. Factum est igitur quod inter alias multas terras quas abstulit sarracenis hos duos episcopatus de quibus agitur ¹⁷⁴ de manibus ipsorum liberauit et per bracarensem archiepiscopum gentes illas ad fidem conuertit. Qui enim archiepiscopus in occupatione illius terre multas expensas fecerat in expetitione (*sic*) eundo cum rege sicut mos et consuetudo est ¹⁷⁵ terre illius, et ob hoc multas possessiones bracarensis ecclesie pignerari obligauit quas pro parte nondum redimere potuit. Bracarensis ergo archiepiscopus ex concessione regis cui priuilegium datum fuerat episcopos illius terre iure suo ¹⁷⁶ consecrauit. Quadraginta ¹⁷⁷ annis Ulixbonensem episcopatum possedit et a paruo tempore postmodum Elborensem similiter ex concessione regia et iure suo sub iurisdictione sua ex tunc retinuit ac possedit. ¹⁷⁷ tempore [...] et compostellanus archiepiscopus litteras ad quos illos nullam mencionem de possessione nostra factam urgentes (*sic*) obtinuit [...] sententia nostram sicut in omnibus aliis causis contra nos, super quas litteras tamen, possessione illorum¹⁷⁸ episcopatum [...] quia nobis preiudicium circa possessionem nostram facere non debebant, cum illi episcopi super subiectione sua conueniri non poterant nec debebant, cum alius subiec-

83. At this particular point the text is following very closely the text of the bull *Manifestis Probatum* itself. The text of this bull would be recurrently used by the Portuguese jurists throughout the troubles of the thirteenth century, whether in the questions between Braga and Compostela, to assert the entitlement of the King to conquest and consequently to the restoration of ecclesiastical sees, or in the questions regarding the King's sovereign rights, later on.

tionem eorum pos-¹⁷⁹ sidebat. Uidens ergo [...] litterarum quas [...] episcopatibus (?) obtinuerat proficiscere circa illos episcopatus nullo modo potest, sicut non proficiscere debebat, tempore domni Urbani procuratorem suum¹⁸⁰ [...] illis episcopatibus contra bracaraensem archiepiscopum obtinuit, quas super iniuriis duorum episcopatum sic impetrasse coram iudice delegato proposuit nec uel eas super proprie¹⁸¹ [...] sicut in libello suo comprehendit sicut etiam coram uobis in iure sepe fuit confessus. Attendens autem bracaraensis archiepiscopus quod hoc sibi potest sufficere ad iniurias repellendas quas¹⁸² [...] -stitione illorum episcoporum obiecte [...] enim possessionem suam probaret quam semper in illis episcopatibus habuerat. Ad hoc probandum complures testes produxit per quos a tempore captionis illos episcopatus se possedisse probat.¹⁸³ [...] probat de Giliberto qui fuit primus episcopus quod eum consecrauit et sibi obediuit. Hoc idem probat de Aluaro qui fuit secundus episcopus. Similiter probat de Suerio qui fuit tertius et ultimus in Ulixbonensi ecclesia. Et¹⁸⁴ in hoc modo probat de Elborensibus episcopis sicut per rubricas et articulos in rollo totum inuenietis distinctum. Cum ergo salua superiori exceptione accesserimus ad principalem causam quam nobis mota¹⁸⁵ fuit uideramus in libello quod [...] -tuit.

Primus enim, fiunt petitiones in libello, ut si postea pars petens uariare uoluerit incipiat ei propria scriptura obuiare ut in quaestione ultima *Saluberrimum*⁸⁴. Per¹⁸⁶ [...] nec debent condempnari nisi in eo quod petitum est, nec absolui nisi in eo quod petitum est. Secundus esset forte per interlocutoriam. Libelli ergo talis tenorem: «Peto quatinus satisfaciatur mihi de in-¹⁸⁷ iuriis quas intueri mihi fecit consecrando Ulixbonensem \et elborensem / quod coherceatur et prohibeatur impedire quominus libere uti possim metropolitana iurisdictione in illis duobus scilicet Ulixbonensi et Elborensi quos credo me pos-¹⁸⁸ sidere [et] ad me [...]» liquet quod dominus compostellanus postulauit ne inquietaretur a domino bracaraense super illis duobus episcopatibus quod nequaquam faceret nisi se assereret possessionem et possessionem retinere uel-¹⁸⁹ let que interdiceret [...] possidetis. Nam illi quod est recuperande possessionis locus non est quia non dicit se expulsus sed inquietatus. Et uis inquietatiua non facit locum immo sola expulsiua interdicto unde uidetur illi uero quod¹⁹⁰ [...] est (?) ad inscende similiter locus non est, quia circa possessionem non habitam nemo potest inquietari. Relinquitur ergo quod per interdictum uti possideretis, ius suum persequi intelligatur. At istud competit soli possessori. Cum itaque se pos-¹⁹¹ sessionem non probet male experitur hoc interdicto. Nam hoc interdicto utrique sunt actores et rei, ut Dig, *Uti possidetis, Si duo*. §. i⁸⁵. Sed ille actoris partes sustinet ubi probet de iure suo qui ad iudicium prouocat,¹⁹² ut Dig. *De iudiciis, In tribus*⁸⁶.

Sic igitur compostellanus in hoc interdicto necesse habet docere de iure suo, qui prouocauit nos ad iudicium, «se nec ui nec clam nec precario ab aduersario pos-

84. *Decretum*, C. 1, q. 7, c. 21. This last q., in the respective c. mentions how the repentant heretics should be received after a public confession.

85. *Dig.*, 43.17.3.1. Once again on the interdicts, the source alludes to the right way of applying the *uti possidetis* interdict, referring to the cases where force is needed to apply the law.

86. *Dig.*, 5.1.13.

sidere», ut Dig. eodem titulo, l. i.⁸⁷ ¹⁹³ Sed dicit quod possessor quia obedientiam olim habuit. Responsio: hec possessio sibi prodesse non debet contra dominum bracarensem cum ab illo clam possederit nam cum esset in possessione suffraganeitatis per munus consecrationis illi impen- ¹⁹⁴ sum tamquam suo suffraganeo, putauit uel putare debuit dominus compostellanus dominum bracarensem sibi controuersiam moturum cum obedientiam recipiebat. Quare clandestina fuit eius possessio si possessio dicatur, quod autem talis ¹⁹⁵ possessor clandestinus censeatur haberetur in Libro (?). Responsio, in *authenticis* N, § \Claues/⁸⁸ sic ergo omnino debet succumbere cum is [dominium?] uincat hoc interdicto quod nec ui nec clam nec precario possidet ab aduersario tempore litis contestate, ut ¹⁹⁶ in *Institutis*, *De interdictis*, in principio⁸⁹. Quia autem non probet compostellanus se nec ui nec clam possessionem habere ita ostendimus. Dicit se ab episcopis Ulixbonensibus obedientias recepisce, licet de Elborensi nihil probet, sed tamen illas obedientias ¹⁹⁷ non probat se nec ui nec clam recepisce. Cum enim non probet se sciente et paciente se recepisce obedientiam quod necesse habet docere non probat se nec ui nec clam \non/ possedisce. Cum enim constet quod postquam ego consecraui illam ¹⁹⁸ obedientiam extorsit, ut dicit, \nec mihi denunciauit/ patet quia clam recepit quod me celato recepit. Sciendum preterea quod hec uerba, iurisdictio metropolitana, que in libello comprehendit multa continent, scilicet consecrationem episcoporum, et ut episcopi ¹⁹⁹ ad concilium ueniant archiepiscopi ex mandato eius, et ut questiones et cause referantur ad archiepiscopum, et ut ipsi episcopi gerant se pro suffraganeis archiepiscopi, et ex obedientia uel mandato faciant ea que precipit ¹⁰⁰ archiepiscopus, et quedam similia in hunc modum [...] nos bracarensi archiepiscopo exhibita fuisse per testes probamus. Cum ergo aduersarius de his omnibus ex parte sua nichil probet, licet uideatur probare obe- ¹⁰¹ dienciam sibi factam fuisse in exilio, patet quod ab eius \in/ petitione absolui debemus cum etsi per talem obedientiam aliquid possessionis adquiratur, quod omnino negamus, minus tamen adquiritur quam per consecrationem et cetera ¹⁰² alia que paulo ante prediximus, cum per obedientiam persona tantum obligetur, non possessio episcopatus adquiratur. At per consecrationem et electionis representationem et alia que supra diximus non tamen persona obligatur sed pos- ¹⁰³ sessio suffraganeitatis adquiritur, et maxime cum per testes nostros probetur de obedientia cum dicant quia ex obedientia et ex mandato faciebant \illi episcopi/ quem archiepiscopus bracarensis eis precipiebat, et expressius de obedientia illi- ¹⁰⁴ citum episcopi ulixbonensis dicant, maxime etiam cum de ultimo episcopo ulixbonensis ecclesie nec obedientiam nec aliquid aliud aduersarius possit probare tempore cuius se dixit possidere, nec obstat quod de quibusdam lit- ¹⁰⁵ teris ab episcopo eiusdem ecclesie sibi missis opponit quia lite pendente obtente fuerunt, sicut per eram impositam designatur. Sed et tales lit-

87. Apparently the archbishop is trying to repeat the same example, thus the «*eodem t*». This would be Dig., 5.1.1, on the best practices for selecting judges and on the consent of those under their jurisdiction. Dig. 43.17.1,2, *Ait pretor*.

88. Dig. 43.24.7.

89. *Inst.* IV, 15: «...nam utriusque interdicti potestas quantum ad possessiones pertinet exaequata est, ut ille vincat et in re soli et in re mobili, qui possessionem nec vi nec clam nec precario ab aduersario litis contestationis tempore detinet».

tere nobis non possunt preiudicare cum priuata scriptura nemini de-¹⁰⁶ bet obesse, et maxime cum litteras et sigilla earum non recognoscant ueras fuisse, propter quod lex dicit testibus et non testimoniis esse credendum. Preterea si hodie episcopus ille qui litteras sibi misisse¹⁰⁷ dicitur hoc sacramento firmaret, [sibi soli?] in preiudicium nostrum, non crederetur, multo minus ergo litteris eius est credendum. Ad hoc ergo tales littere fiunt non ut per eas alii preiudicetur sed ut per eas ei qui fecit¹⁰⁸ sicut obediens extiterit professio sua obuiare ostendatur. Argumentum in decreto, c. i. q. iiii. *Saluberrimum*⁹⁰. Et ita per tales litteras contra nos nichil potest probari nedum quia per litteras possessio non potest adquiri¹⁰⁹ quia non ex litteris sed anime et corpore acquiritur possessio. Nam ex litteris dicitur quod persona obligetur ad aliquid faciendum uel non faciendum. At ipsa substantia obligationis non in hoc consistit ut aliquid¹¹⁰ [...] faciat, sed re (?) persona obliget ut Dig., *De actionibus et obligationibus, Obligationis*⁹¹, quare per illas litteras tantum persona fuit obligata sed possessio non potuit adquiri. Quia rescriptum uires non habuerit¹¹¹ ex eo probatur quia fuit obtentum super possessione (sic) absentis, ut. C. *Si per uim fuerit absentis possessio*, I, *Nec imperiale*⁹². Item constat bracarensem archiepiscopum consecrasse ultimum episcopum ulixbonensem qui nunc¹¹² est. Et constat obedientiam eiusdem sibi factam. Sic ergo constat uos in interdicto uti possidetis quod ratione presentis possessionis intentantur superiores esse. Nam etsi ponatur quod nostra uiciosa fuerit possessio,¹¹³ eo tamen quod tempore litis contestate se dixit aduersarius possidere, sicut ex libello facto iudicatis succumbere debet omnino. Cum numquam ratione possessionis preterite in hoc interdicto quis possit hoc debeat obti-¹¹⁴ nere nec uel formam libelli restitutionem petere possit? Nam si peteret eum de nouo oporteret probare nedum quia nostra possessio nunquam potest uiciosa iudicari cum ea a sarracenis occupasset¹¹⁵ et loca illa ad fidem conuertisse sed potius sua, si eam aliquo modo dicatur habuisse. Sed etsi ponatur quod fuerit uiciosa ab initio, facta est tunc sine uicio eo quod appellauit et facta appellatione (?) [...] ¹¹⁶ et [...] obligauit forte frustratorie obicietur, uidelicet quod tempore litis contestate nos illos episcopatus possedissemus non probamus quod falsum dicimus esse. Nam cum probamus nos consecrasse episcopum qui nunc est Ulixbone¹¹⁷ et ab eodem nobis obedientiam factam fuisse, eo ipso probamus tempore litis sub nostra subiectione fuisse, et maxime cum eodem coram iudice aduersarius propter hoc se grauiter confessum asseuerasset, sicut in prin-¹¹⁸ cipio acturum continetur. Nam episcopos quos hodie bracarensis possidet ecclesia aliter non possemus probare nos possidere, nisi per consecrationem et obedientiam nobis factam. Quia etsi possessio ista nostra durasset¹¹⁹ ex litteris romanorum pontificum inferius allegatis manifeste probatur, huic quoque sue petitioni responsum fuit. Consecrando uelborensem et/ ulixbonensem post tuam appellationem non feci tibi iniuriam. Nec enim¹²⁰ fit iniuria nisi ex animo, ut. xv. q. in *Merito*⁹³. Nec ergo

90. *Decretum*, C. 1, q. 7, c. 21.

91. In fact, «De obligationibus et actionibus, Obligationum», *apud Dig.*, 44. 7. 3. The text collated in the fragment explains how obligation derives from compromise, thereby perfectly serving the intentions of Martinho Pires at this exact point in his argumentation.

92. «Si per uim vel alio modo absentis perturbata sit possessio», *apud Cod.*, 8.5.2.

93. *Decretum*, C. 15, q. 1, c. 1. C. This seems to have been very carefully selected, as the text

intendebam nec intendo tibi iniuriari in uestro iure, immo uti pluribus de causis, primo quia antecessor meus uel ego antecessorem illius conse-¹²¹ crauimus et fui continue in possessione, et sum in ea nec eam per sententiam a me euicisti. Ergo licite possum uti comodo [quomodo (*ras.*)] mee possessionis, si ergo usus sum iure possessionis mee etiam post appellationem tuam non feci¹²² iniuriam quia lex dicit nulli iniuriam facit qui iure suo utitur.

Item appellatio non impedit quin aliquis utatur sua possessione sed impedit ne aliquid innouetur pendente appellatione. Nichil innouaui¹²³ sed quod habui retinui. Ergo non est quod mihi debeat imputari. Lex dicit aliud est facere, aliud \re/ficere. Si «y» agrum quem constat me possidere colere uelim, et tu dicis, «Appello ne colas», appellatio nulla¹²⁴ est. Sed ponamus sine preiudicio nostro quod appellatio tenuerit. Dominus bracarensis detulit ei de mera uoluntate ob reuerenciam sedis romane sicut his testibus probatur cum non teneret et expec-¹²⁵ tauit \fere/ per triennium, nec tu appellationem tuam es prosecutus. Ergo intelligeris ei renunciaste, quia dixit lex, *ei quis (sic) appellat impertitur annus* etc.⁹⁴. Item dicit Alexander quod nisi appellans appellationem suam prosequatur¹²⁶ inter certum terminum, redit iurisdictio ad eum a quo fuit appellatum⁹⁵. Et hoc idem continetur in lege superiori, *Ei quis*⁹⁶. Ex quo ergo renunciasti appellationi de tua uoluntate consecraui eum. Sed lex dicit,¹²⁷ «uolenti non fit iniuria». Hoc dicit canon xxx, iii, q. v, *Noluit*⁹⁷. Ex quo ergo nos fuimus prosecuti et ipse non petimus expensas, et maxime cum causa ista principaliter fuerit comissa.

Quia¹²⁸ uero a tempore appellationis facte a domino compostellano ne dominus bracarensis consecraret episcopos ulixbonenses et elborenses, triennium \fere/ fuerit elapsus usque ad illud tempus in quo bracarensis archiepiscopus eosdem consecrauit, sic pro-¹²⁹ batur, nam dominus compostellanus appellauit sub tribus iudicibus quibus prius causa iiii episcopatum et zamorensis episcopatus fuerat

quoted refers to the irrelevance – and consequent lack of guilt – which should be applied to the sins which are not done out of evil intention but out of mere ignorance.

94. *Decretum*, C. 2, q. 6, c. 41. The quotation of the first words of c. 41 of the *questio* in Gratian's *Decretum* is here identical to the Roman Editio, as ed. by Friedberg (*CICan*, cols 481-482). In Friedberg edition, the words *Ei qui appellat impertitur annus* in the Roman editio were preferred to the editor's critical text *Si quis appellat, inquiratur annus*. It seems that any residual doubts on the identification of this tract can be cast aside. It is c. 41, *De Eodem*, in which forms and limits to the appeals in capital causes (as was the case in the previous c.) are dealt with.

95. *Comp. I*, 5.2.20 (X 2.28.5).

96. *Decretum*, C. 2, q. 6, c. 41. Here, again, as before, Gratian calls on abundant materials from Justinian's Code, especially from book 7, to define the ways and forms of appeal and respective limitations or invalid forms. And thus, shielding himself in Gratian's words, and indirectly also in Justinian's Code, archbishop Martinho Pires proposes the theory that the appeal of Compostela was not valid.

Already in c. 40, on which appeals on capital cases would not be considered valid, Gratian had stated: «Tempus autem exequendae appellationis annus est, uel, si iusta causa intercesserit, biennium». Now, c. 41, he will develop even further such hypothesis stating (we follow the lesson of ed. Romana as given by Friedberg, *ibidem*): «Ei qui appellat impertitur annus, intra quem secundum se communiter cum aduersario litem exequatur, aut si iusta intercesserit causa, annus alius indulgeatur».

97. *Decretum*, C. 33, q. 5, c. 16.

comissa, sicut per testes aduerse partis probatur, scilicet Petrus, abbas sancti Mar-¹³⁰ tini, Petrus, abbas de Antealtaria, Magister Martinus decanus, et ipse com-
postellanus dixit quod post citacionem ab uno iudice factam dominus bracarensis
illos episcopos consecrauerat sicut in principio ac-¹³¹ torum iudex testatur, quod
tamen non probat, et nos inficiamur omnino, scilicet, quod post citacionem eos
consecraret. Secundum ergo assercionem aduersarii triennium elapsu fuisse hoc
modo conuincitur. Nam duo ex pre-¹³² cedentibus iudicibus eo tempore tulerunt
sententiam contra nos in causa Zamorense era M. cc.xx.ii⁹⁸ et ita modo sicut ex
sentencia apparet sunt xv anni, cum Era modo currat M. cc. xxx. vii. ¹³³ At uero
nunc sunt \fere/ xii anni quod unus iudex de causa ista cognouit post cuius cita-
tionem ipse dicit nos illos episcopos consecrasse, quia uero xii anni sint ex fine
actorum eius, probatur et sic habetis quod iii. ¹³⁴ anni fuerunt in medio et secun-
dum eius assercionem cum iudex tantum per iii. menses ad plus ibi de causa trac-
tauerit nedum quia appellationem illam nunquam prosecutus fuisse probatur. Unde
expensas postu.....

98. See Erdmann, *PUP*, 289-291. Here he is mentioning the famous sentence given in Coria by the bishops of Tarazona and Salamanca dated 24 January 1184, granting Zamora to Compostela. The archbishop is extremely well informed. From the original group of judges delegate, John of Tarazona, Vital of Salamanca and Fernando of Porto, only the first two were present when the sentence was issued, which was to cause so much trouble.

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ABSTRACT

An Archbishop and His Claims: the Allegations of Martinho Pires in Rome (1199), on the Quarrels Between Braga and Compostela

In 1199 the quarrels between the sees of Braga and Compostela were at their peak. The archbishop of Braga went to Rome to defend his claims and have earlier sentences reversed. He did it by displaying an elaborate and complex set of allegations, contesting all of his opponents' accusations and challenging the authority of the Pope as universal judge. As early as 1199, the concepts of *plenitudo potestatis*, *certa scientia* and the debate on the three persons of the Pope were put forward in an ingenious manner, resorting to legal arguments from Roman law, Canon law and the Scriptures, but weaving them to support Braga's interests.

These allegations help to further demonstrate the full extent of the juridical culture flourishing in the Northwestern Iberian Peninsula. They appear in a unique procedural piece of which only fragments have been published before.

This article publishes the full text, with an apparatus of references, whilst commenting on the meaning of the allegations and their implications for what we know about juridical practice in the archdiocese of Braga as well as about the erudite reception of and reaction to the rise of the papal power.

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